

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE MIDDLE DISTRICT OF FLORIDA

SONS OF CONFEDERATE VETERANS,  
FLORIDA DIVISION, INC., a Florida  
corporation, and JOHN W. ADAMS,

Plaintiff(s),

vs.

CASE NO. 6:09-CV-0134-28-KRS  
(Judge John Antoon, II)

JEFFREY H. ATWATER, in his official capacity  
as President of the Florida Senate, RAY SANSOM,  
in his official capacity as Speaker of the Florida  
House of Representatives, ANDY GARDINER, in his  
official capacity as Chairman of the Transportation  
Committee of the Florida Senate, RICHARD GLORIOSO  
and MICHAEL DAVIS in their official capacities as Co-  
Chairmen of the Committee on Infrastructure of the  
Florida House of Representatives, and ELECTRA  
THEODORIDES-BUSTLE, in her official capacity  
as Executive Director of the Department of  
Highway Safety and Motor Vehicles of the State of  
Florida,

Defendant(s).

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**PLAINTIFFS' COMPLAINT (INJUNCTIVE RELIEF REQUESTED)**

Plaintiffs, SONS OF CONFEDERATE VETERANS, FLORIDA DIVISION, INC.

("SCV"), and JOHN W. ADAMS ("Adams"), sue the Defendants, JEFFREY H.

ATWATER ("Atwater"), in his official capacity as President of the Florida Senate, RAY

SANSOM ("Sansom"), in his official capacity as Speaker of the Florida House of

Representatives, ANDY GARDINER ("Gardiner"), in his official capacity as Chairman

of the Transportation Committee of the Florida Senate, RICHARD GLORIOSO (“Glorioso”) and MICHAEL DAVIS (“Davis”) in their official capacities as Co-Chairmen of the Committee on Infrastructure of the Florida House of Representatives, and ELECTRA THEODORIDES-BUSTLE (“Bustle”), in her official capacity as Executive Director of the Department of Highway Safety and Motor Vehicles (“the Department”) of the State of Florida, and state:

**Allegations Applicable to All Counts**

1. Plaintiff, SONS OF CONFEDERATE VETERANS, FLORIDA DIVISION, INC. (“SCV”), is a Florida corporation. SCV’s membership is composed of descendants of those who fought in the armed forces of the Confederate States of America (“CSA”) during the War Between the States (1861-65). The State of Florida was one of the Confederate States of America.
2. Plaintiff, JOHN W. ADAMS (“Adams”), is a citizen of the United States and of the State of Florida. Adams is a member of SCV. Adams is a resident of Volusia County in the Orlando Division of the Middle District of Florida. Adams is also the vice president of SCV and the chairman of SCV’s “Confederate Heritage Plate Program.”
3. Defendant, JEFFREY H. ATWATER (“Atwater”), is the current President of the Senate of the State of Florida. Atwater is being sued herein solely in his official capacity as the President of the Senate of the State of Florida.
4. Defendant, RAY SANSOM (“Sansom”), is the current Speaker of the House of Representatives of the State of Florida. Sansom is being sued herein solely in his

- official capacity as the Speaker of the House of Representatives of the State of Florida.
5. Defendant, ANDY GARDINER (“Gardiner”), is the current Chairman of the Transportation Committee of the Senate of the State of Florida. Gardiner is being sued herein solely in his official capacity as Chairman of the Transportation Committee of the Senate of the State of Florida.
  6. Defendants, RICHARD GLORIOSO (“Glorioso”) and MICHAEL DAVIS (“Davis”), are Co-Chairmen of the Committee on Infrastructure of the House of Representatives of the State of Florida. Glorioso and Davis are being sued herein solely in their official capacities as Co-Chairmen of the Committee on Infrastructure of the House of Representatives of the State of Florida.
  7. Defendant, ELECTRA THEODORIDES-BUSTLE (“Bustle”), is the Executive Director of the Department of Highway Safety and Motor Vehicles (“the Department”) of the State of Florida. Bustle is being sued herein solely in her official capacity as the Executive Director of the Department.
  8. In 1995, the legislature of the State of Florida passed ch.95-282, Laws of Florida, creating three new statutes, which together establish a motor vehicle, specialty license plate program for the State of Florida. Those statutes are Section 320.08053 (“**Requirements for requests to establish specialty license plates**”), 320.08056 (“**Specialty license plates**”), and Section 320.08058 (“**Specialty license plates**”), Florida Statutes.
  9. Under Florida’s specialty license plate program, an organization wishing to have the Department issue a specialty plate must submit to the Department a letter of

request, a \$60,000 application fee, a marketing strategy outlining a short-term and long-term marketing plan for the proposed plate and the results of a scientific survey of Florida motor vehicle owners, indicating at least 30,000 motor vehicle owners intend to purchase the organization's proposed specialty plate. *Cf. Women's Emergency Network v. Bush*, 323 F.3d 937, 941 (11<sup>th</sup> Cir. 2003) ("*Bush*"), and Section II of *Hildreth v. Dickinson*, Case No. 99-583-Civ-J-21A, 1999 WL 33603028 (N.D. Fla. December 22, 1999) (Nimmons, judge) ("*Hildreth*").

10. If the organization meets those requirements, the Executive Director of the Department notifies the staff directors of the Florida House Infrastructure Committee and the Florida Senate Transportation Committee that the organization has complied with the statutory requirements needed to pursue legislation to create a new specialty license plate. A bill is then introduced to amend the provisions of Sections 320.08056 and 320.08058, Florida Statutes, to create the proposed license plate, establish its design, and provide for the distribution of use fees received from the sale of the proposed plate.
11. It is important to note that the enabling statutes for Florida's specialty license plate program fail to provide criteria the legislature is to use to decide whether or not to pass a proposed specialty license plate creation bill once the statutory requirements have been met by the sponsoring organization. All that is stated is that if the specialty license plate requested is not approved by the legislature, the application fee is to be refunded. *See*, Section 320.08053(2), Florida Statutes. In other words, under Florida's legislative scheme the legislature has "unfettered

- discretion,” *see, Bush, supra*, 323 F.3d at 941, in deciding whether to approve or disapprove a proposed specialty plate. As an aside, the inclusion of such “unfettered discretion” of the legislature in the specialty plate creation process has been criticized by various courts. *See, e.g., Planned Parenthood v. Rose*, 236 F.Supp.2d 564, 574 (D.S.C. 2002).
12. Unfortunately, organizations related to SCV have had difficulty in the past with having legislatures of other states create “Confederate Heritage” specialty plates similar in design to the one proposed here.
  13. For example, in North Carolina, the sponsoring organization was required to sue the Department of Motor Vehicles to compel it to accept their application for a specialty plate. *See, North Carolina Division of Sons of Confederate Veterans v. Faulkner*, 131 N.C. App. 775, 509 S.E.2d 207 (1998) (“*SCV I*”).
  14. In Maryland, the Motor Vehicle Administration used its authority under a state regulation allowing it to recall a specialty plate considered to be objectionable or offensive to recall a “Confederate Heritage” plate similar to the one sought here. A Federal District Court enjoined the Motor Vehicle Administration from recalling the plate. *See, Sons of Confederate Veterans, Inc. v. Glendening*, 954 F.Supp. 1099 (D. Md. 1997) (“*SCV II*”).
  15. In Virginia, the legislature allowed a “Confederate Heritage” plate, but prohibited the display of any emblem or logo on the plate. This logo restriction imposed by the Virginia legislature was declared by the courts to be violative of the First Amendment rights of the sponsoring organization and, therefore, unconstitutional. *See, Sons of Confederate Veterans, Inc. v. Holcomb*, 129 F.Supp.2d 941 (W.D.

- Va. 2001) (“*SCV III*”), *aff’d sub nom.*, Sons of Confederate Veterans, Incorporated v. Commissioner of the Virginia Department of Motor Vehicles, 288 F.3d 610 (4<sup>th</sup> Cir. 2002) (“*SCV IV*”), *reh. denied*, 303 F.3d 241 (“*SCV V*”).
16. Nine other states now have specialty plates similar to the “Confederate Heritage” plate involved here.
  17. Prior to May 2, 2008, SCV made application to the Department under the subject statutes for issuance of a “Confederate Heritage” specialty plate. SCV submitted its letter of request, its \$60,000 application fee, its required marketing plan and financial plan and its required survey. As required by statute, SCV submitted a proposed, sample plate. The sample plate contains five flags: one, the 2<sup>nd</sup> National Confederate Flag (a/k/a “Stainless Banner”); two, 3<sup>rd</sup> National Confederate Flag; three, “Bonnie Blue”; four, the flag of the State of Florida as adopted in 1861; and, five, the Confederate Battle Flag situated in the center of the proposed plate. The sample plate also contains two coat buttons issued to Confederate troops from Florida: one, the Great Seal of the State of Florida and, two, the “Cherokee Rose.”
  18. On March 10, 2008, the Department notified the staff directors of the Florida House Infrastructure Committee and Senate Transportation Committee that SCV had complied with all the statutory requirements needed to pursue enabling legislation for the creation of its proposed “Confederate Heritage” plate.
  19. On February 26, 2008, State Representative Donald Brown introduced House Bill 1159 to amend Section 320.08056, Florida Statutes, to add a new sub-section to that statute, to-wit: “(mmm) Confederate Heritage license plate, \$25.” House

Bill 1159 also proposed to amend Section 320.08058, Florida Statutes, to add a new sub-section, to-wit:

“(65) CONFEDERATE HERITAGE LICENSE PLATES. –

“(a) The department shall develop a Confederate Heritage license plate as provided in this section. Confederate Heritage license plates must bear the colors and design approved by the department and must contain an emblem or logo of Florida’s historic Confederate flags and facsimiles of the buttons issued to Florida Confederate units. The word “Florida” must appear at the top of the plate, and the words “Confederate Heritage” must appear at the bottom of the plate.

“(b) The license plate annual fees shall be distributed to Sons of Confederate Veterans, Florida Division, Inc., to fund educational programs in schools, cemetery location and restoration, educational scholarship programs, and other projects within the state promoting Florida’s history and heritage. Sons of Confederate Veterans, Florida Division, Inc., may retain all revenue from the annual use fees until all startup costs for developing and establishing the plate have been recovered. Thereafter, up to 5 percent of the annual use fee revenue may be used for administrative costs directly associated with operations of Sons of Confederate Veterans, Florida Division, Inc., and up to 20 percent may be used for promotion and marketing of the specialty license plate.”

20. Rather than bringing HB 1159 up for a vote and sending it on to the House Floor, Glorioso, the then-Chairman of the House Infrastructure Committee, refused to bring the bill up for a vote, his stated reason being that SCV’s proposed “Confederate Heritage” plate was “controversial.” As an aside, the Supreme Court has stated that government may not restrict the expression of a viewpoint because that viewpoint is “controversial.” *See, e.g., Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972).

21. HB 1159 was written to take effect on July 1, 2008. Because of Glorioso’s determination not to move HB 1159 forward because of the “controversial” nature of SCV’s “Confederate Heritage” plate, no action was taken on HB 1159 in the 2008 session of the Florida legislature, no plate was issued, nor was SCV’s

\$60,000 application fee returned. Because of past statements of Glorioso and others in the legislature, re-submitting a bill in the 2009 session of the Florida legislature similar to HB 1159 would be a useless act in that, absent intervention of the courts, the leadership of the legislature will not allow passage of a bill approving SCV's proposed "Confederate Heritage" plate.

22. On June 17, 2008 the legislature passed ch. 2008-176, Laws of Florida. Section 45 of ch. 2008-176 established a "moratorium" on the issuance of specialty plates by the Department. The moratorium became effective October 1, 2008.

Specifically, Section 45 of ch. 2008-176 states:

"Except for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, Florida Statutes, prior to the effective date of this act, or which was included in a bill filed during the 2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue a new specialty license plate pursuant to ss. 320.08056 and 320.08058, Florida Statutes, between July 1, 2008 and July 1, 2011."

### **Count I**

23. This is an action by Plaintiffs against Defendants for declaratory and mandatory injunctive relief pursuant to Sections 2201 and 2202 of Title 28 of the United States Code and Section 1983 of Title 42 of the United States Code.

24. Jurisdiction is proper under federal question jurisdiction, pursuant to Sections 1331 and 1343 of Title 28 of the United States Code.

25. Venue is proper in the Middle District of Florida. The Department maintains numerous offices in the Orlando Division of the Middle District and conducts a substantial portion of its business from those offices. *See*, Section IV ("Venue")

of *Hildreth*. Additionally, Defendant, Gardiner, is a resident of Orange County, Florida.

26. All conditions precedent to the bringing of this action have either occurred or been performed by Plaintiffs or been waived by Defendant.
27. Plaintiffs re-allege and incorporate by reference herein those allegations contained in paragraphs 1 through 22, above.
28. Since Sections 320.08053-320.08058, Florida Statutes, unconstitutionally grant the Florida legislature “unfettered discretion” to refuse to statutorily amend those statutes so as to create a specialty plate (even though the statutory requirements have already been met by the sponsoring organization), SCV is entitled to declaratory relief stating that the legislature’s refusal to enact the necessary statutory amendments needed to create SCV’s proposed “Confederate Heritage” plate because of the plate’s allegedly, “controversial” nature is a denial of SCV’s free speech and equal protection rights under the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the United States Constitution.
29. For those same reasons, SCV is entitled to a mandatory injunction against Defendants, Atwater, Sansom, Glorioso, Davis and Gardiner, compelling them to have the legislature enact the legislation necessary to create SCV’s proposed “Confederate Heritage” plate and against Defendant, Bustle, to issue the plate.
30. In the alternative, should this Court decide that, for whatever reason, it is inappropriate for it to order the legislature to so amend the Florida Statutes as requested above, then SCV is entitled to a declaration as follows:

- (1) that those portions of the subject statutes requiring the legislature's involvement in their "unfettered discretion" in the specialty plate approval process are unconstitutional; and,
- (2) that those portions be severed from the subject statutes; and,
- (3) that a mandatory injunction issue against Defendant, Bustle, that she directly issue the subject plate without legislative approval.

31. Adams, additionally, wishes to purchase the proposed "Confederate Heritage" plate in order to use his free speech rights to express his own Confederate heritage as a descendant of Confederate war veterans. As Chairman of SCV's Confederate Heritage Plate Program and as a person who lent SCV \$50,000 of the \$60,000 application fee, Adams's would also benefit from the consequent revenue resulting from the sale of the proposed plate to the public. For those reasons, Adams is entitled to the relief sought by SCV above.

32. SCV has retained undersigned counsel to prosecute this action and has agreed to pay him a reasonable attorney's fee for his efforts herein. SCV has additionally retained the Rutherford Institute in Charlottesville, Virginia to assist undersigned counsel and has agreed to pay them a reasonable attorney's fee for such assistance. Defendants are liable for that fee under Section 1988 of Title 42 of the United States Code.

WHEREFORE SCV and Adams request this Court to take jurisdiction herein and to declare that Defendants, Atwater, Sansom, Gardiner, Glorioso and Davis, are constitutionally required to have the legislature amend the subject statutes so as to create SCV's proposed "Confederate Heritage" plate and to mandatorily enjoin said Defendants

to do so, as well as to mandatorily enjoin Defendant, Bustle, to issue such plate, as well as to award SCV a reasonable attorney fee herein and to award Plaintiffs their court costs herein and to award Plaintiffs such other relief as this Court deems appropriate. In the alternative to the above requested relief, SCV and Adams request this Court to declare that those portions of the subject statutes which involve the legislature in their “unfettered discretion” in the specialty plate approval process are unconstitutional, and that those portions be severed from the subject statutes and that Defendant, Bustle, be mandatorily enjoined to issue the subject plate directly without legislative approval and to award SCV a reasonable attorneys fee and to award Plaintiffs their court costs herein and to award Plaintiffs such other relief as this Court deems appropriate.

## **Count II**

33. This is an action in the alternative to Count I by Plaintiffs against Defendants for declaratory relief pursuant to Sections 2201 and 2202 of Title 28 of the United States Code and Section 1983 of Title 42 of the United States Code.
34. Jurisdiction is proper under federal question jurisdiction, pursuant to Sections 1331 and 1343 of Title 28 of the United States Code.
35. Venue is proper in the Middle District of Florida. The Department maintains numerous offices in the Orlando Division of the Middle District and conducts a substantial portion of its business from those offices. *See*, Section IV (“Venue”) of *Hildreth*. Defendant, Gardiner, is a resident of Orange County, Florida.
36. All conditions precedent to the bringing of this action have either occurred or been performed by Plaintiffs or been waived by Defendants.

37. Plaintiffs re-allege and incorporate by reference herein those allegations contained in paragraphs 1 through 22, and 31, above.
38. Sections 320.08053-320.08058, Florida Statutes, provide the Florida legislature with “unfettered discretion” to refuse to statutorily amend those statutes so as to create a specialty plate even though the statutory requirements for issuance of the plate have been met by the sponsoring organization. Defendants, Atwater, Sansom, Gardiner, Glorioso and Davis’ refusal to have the legislature enact the necessary statutory amendments to create SCV’s proposed “Confederate Heritage” plate because of the plate’s allegedly “controversial” nature is a denial of SCV’s free speech and equal protection rights under the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the United States Constitution.
39. Should this Court decide that, for whatever reason, SCV is not entitled to the injunctive relief sought in Count I, above, then this Court should declare Sections 320.08053, 320.08056, and 320.08056, Florida Statutes, unconstitutional *in toto* since they unconstitutionally inhibit SCV’s free speech rights by “*condition*[ing] that speech on obtaining a license or permit from a government official in that official’s boundless discretion.” (the Court’s emphasis). City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 764 (1988).
40. SCV has retained undersigned counsel to prosecute this action and has agreed to pay him a reasonable attorney’s fee for his efforts herein. SCH has additionally retained the Rutherford Institute in Charlottesville, Virginia to assist undersigned counsel and has agreed to pay them a reasonable attorney’s fee for such

assistance. Defendants are liable for that fee under Section 1988 of Title 42 of the United States Code.

WHEREFORE SCV and Adams request this Court to take jurisdiction herein and, should it fail to grant the injunctive relief sought in Count I, above, then Plaintiffs request that this Court declare Sections 320.08053, 320.08056, and 320.08058, Florida Statutes, unconstitutional *in toto*, as well as to award SCV a reasonable attorney's fee and to award Plaintiffs their court costs herein and such other relief as this Court deems appropriate.

DATED this 20th day of January, 2009.

/s/

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