Team J

No.: 09-0001

IN THE SUPREME COURT OF THE UNITED STATES

FEBRUARY, 2009

MARCIA S. ADAMS, in her official
capacity as the Director of the
South Carolina Department of Motor
Vehicles; JON OZMINT, in his official
capacity as the Director of the Department
of Corrections of South Carolina.

Petitioners

v.

REV. DR. THOMAS A. SUMMERS,
REV. DR. ROBERT M. KNIGHT,
RABBI SANFORD T. MARCUS, REV.
DR. NEAL JONES, HINDU
AMERICAN FOUNDATION, and
AMERICAN-ARAB
ANTI-DISCRIMINATION COMMITTEE

Respondents

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

BRIEF FOR PETITIONER

QUESTIONS PRESENTED

1. Is the Establishment Clause of the First Amendment violated by an act which does not endorse or favor a particular religion and poses no risk of creating an institutional entanglement with religion.

2. Are the free speech provisions of the First Amendment violated by the conveyance of a message which is purely governmental.

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Statement Regarding Oral Argument

Petitioner, the State of South Carolina, respectfully requests oral argument.

Statement of Jurisdiction

This is an appeal from a decision by the United States Court of Appeals for the Fourth Circuit, reversing a decision by the United States District Court for the District of South Carolina and finding a specialty automobile license plate statute passed by the State of South Carolina to be unconstitutional.

Subject matter jurisdiction in the District Court was founded on Title 28 U.S.C. § 1331 (2008) (federal question) as a facial constitutional challenge to a South Carolina statute.

Jurisdiction in the Court of Appeals was founded on Title 28 U.S.C. § 1291 (2008) (from a final judgment of the District Court in a civil matter). The final judgment of the Fourth Circuit Court of Appeals was entered on January 1, 2009. Record 2.

This Court granted Certiorari on February 1, 2009. Record 27. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1) (2008) (writ of certiorari) and Rule 11 of the Supreme Court Rules.

Standard of Review

This case raises questions concerning the application of constitutional principles and, therefore, questions of law. This Court should review questions of law de novo and afford little or no deference to the lower court's conclusions of law. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 948 (1995).

STATEMENT OF THE CASE

This complaint was originally filed in the United States District Court for the District of South Carolina by various religious leaders and non-profit religious-cultural organizations (hereinafter "Respondents") against the State of South Carolina (hereinafter "South Carolina") on June 19, 2008. Record 15. The Respondents challenged the constitutionality of South Carolina Code Ann. § 56-3-10110 (2008) (hereinafter "the 'I Believe' Act"), which provides for the creation of a specialty automobile license plate, on the grounds that it purportedly violated both the Establishment Clause and free speech provisions of the First Amendment. Record 5. The Respondents sought both a judgment that the "I Believe" Act is unconstitutional and an injunction to prevent production and distribution of the "I Believe" license plate. Record 6.

The United States District Court for the District of South Carolina found that the Respondents did not have standing to challenge the "I Believe" Act. Record 11. In the alternative, the District Court went on to rule that even if the Respondents had standing, the statutory scheme permitting the "I Believe" license plate was not in contravention of the Establishment Clause or the free speech provisions of the First Amendment. Record 11.

On January 1, 2009, the United States Court of Appeals for the Fourth Circuit reversed the decision of the District Court, finding that the Respondents did possess the requisite standing and that the "I Believe" Act violated both the Establishment Clause and the free speech provisions of the First Amendment. Record 11.

On February 1, 2009, this Court granted South Carolina's petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit. Record 27.

STATEMENT OF FACTS

On May 22, 2008, the South Carolina General Assembly passed the "I Believe" Act, authorizing the creation of a new specialty automobile license plate to join the long list of such optional license plates available to the public of South Carolina. Record 3.

South Carolina law requires that all motor vehicles be registered and licensed through the South Carolina Department of Motor Vehicles (hereinafter "DMV"). Record 6. Vehicle owners pay a biennial registration fee, typically $24, in order to receive the standard-issue license plate. Record 6. Vehicle owners may, alternatively, obtain a specialty license plate, which generally requires an additional fee and, in some instances, may require special qualifications. Record 6. The State of South Carolina provides its citizens with a wide range of specialty license plates to choose from, broadly reflecting the places, events, pastimes, and groups that make up the South Carolina experience. *See*, http://www.scdmvonline.com/DMVNew/plategallery.aspx. Specialty license plates have been issued conveying such diverse messages as "First in Golf," "Support out Troops," "Working for the Wild Turkey," and, notably, "In Reason We Trust." *Id.* The latter plate was issued on behalf of The Council for Secular Humanism before the passage of the "I Believe" Act. Record 5, n. 2

There are two methods by which specialty license plates are created pursuant to South Carolina law. First, qualifying organizations and institutions may apply directly to the DMV for specialty license plates pursuant to S.C. Code Ann. § 56-3-3710 (1976) (college or university license plates), *Id.* § 56-3-7750 (fraternity and sorority license plates), *Id.* § 56-3-8000 (non-profit organizational plates), and DMV Policy RG-504. Record 8. An organization or institution wishing to obtain a license plate in this way must have held non-profit status within the State of South Carolina for at least five years, Record 8, and all applications are subject to approval by a

DMV Review Panel which has the option of rejecting license plate proposals deemed inappropriate. Record 9. During the application phase organizations or institutions typically designate a fee to be charged in addition to the regular registration fee, with the difference to benefit the organization or institution for whom the specialty license plate is to be created. Record 9. A specialty license plate created in this way may not contain any slogans, names, or other text unless the text appears within the sponsoring organization's emblem, seal, logo, or other representative symbol. Record 9. If an organization or institution's proposed design is rejected, that organization or institution may appeal the decision of the DMV Review Panel to a legislative review committee within the South Carolina General Assembly. Record 10.

The second process by which specialty automobile license plates are created is legislatively within the South Carolina General Assembly pursuant to S.C. Code Ann. § 56-3-8100 (1976). A statute to create a specialty license plate is adopted in the same manner as any other legislation. Record 7. The General Assembly has not placed any design limitations on itself when creating license plates; therefore legislatively created specialty license plates may contain mottos or statements, in addition to images or symbols without size or placement restrictions. Record 7. S.C. Code § 56-3-8100 provides that the fee for all license plates created by the General Assembly after January 1, 2006, is to be the regular $24 registration fee plus an additional fee to be requested by the individual or organization seeking issuance of the plate. Record 4. The additional fee is to be used first and foremost to defray the expenses of producing and administering special license plates. S.C. Code § 56-3-8100(c). Any remainder is to be distributed to an organization designated by the individual or organization seeking issuance of the plate. *Id.*

Regardless of which method is used to create a specialty license plate, the DMV will not begin production of the specialty license plate until it has received 400 prepaid applications for the plate or $4000 from a sponsoring individual or organization. Record 7.

The "I Believe" Act, as approved unanimously by the South Carolina General Assembly, provides that "The ["I Believe"] plate must contain the words 'I Believe' and a cross superimposed on a stained glass window." Record 3. In accordance with S.C. Code § 56-3-8100, the DMV set the fee for the "I Believe" license plate at $5 above the normal registration fee of $24 to defray the cost of production. Record 5. A DMV employee then crafted a design for the plate pursuant to the General Assembly's instructions, depicting a cross superimposed on a stained glass window. Record 5. On October 30, 2008, the DMV posted the "I Believe" license plate on its website and began taking orders from the public. Record 5. On November 3, 2008, the DMV announced that it had received the requisite 400 prepaid applications and would begin production of the "I Believe" plate. Record 5.

On January 1, 2009, the United States Court of Appeals for the Fourth Circuit found the "I Believe" Act to be unconstitutional. Record 3. The current appeal followed.

SUMMARY OF THE ARGUMENT

The endorsement test is the appropriate standard by which to judge whether or not the "I Believe" Act violates the Establishment Clause. The Court of Appeals relied on Fourth Circuit precedent in subjecting the "I Believe" Act to a three-prong test originally developed by this Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). That test requires that a government action, in order to be legitimate, must: (1) have a secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) not foster an excessive governmental entanglement with religion. In practice, however, the *Lemon* test has proven difficult to apply consistently, and has

been widely criticized by judges and commentators alike. While it has never been invalidated, this Court has held that *Lemon* today provides no more than a helpful signpost in dealing with Establishment Clause problems.

Aside from *Lemon*, the primary alternative test that this Court has utilized to analyze Establishment Clause issues is the endorsement test, which focuses on institutional entanglement and on governmental endorsement or disapproval of religion. The endorsement test has been widely promoted, both for remaining truer than *Lemon* to the actual intent of the Establishment Clause and for reducing the practical difficulties with implementation that have plagued the *Lemon* test, producing more consistent, reliable results. The endorsement test offers a nuanced, contextualized approach to ascertaining when the Establishment Clause has been violated and is, therefore, a superior approach than the *Lemon* test.

The Court should apply the endorsement test to the instant case and find that the State of South Carolina has not endorsed Christianity through the passage of the "I Believe" Act. The "I Believe" license plate is a passive symbol. It does not convey a message of governmental endorsement of Christianity or of government disapproval of other religions or world views. Indeed, the fact that the State of South Carolina actually approved the issuance of a license plate for the Counsel of Secular Humanism before it passed the "I Believe" Act shows that the state's intention is not to favor any one religion over another.

However, even if the *Lemon* test is applied the "I Believe" Act passes constitutional muster. First, it has a secular purpose. The State of South Carolina provides its motorists with a wide variety of license plates, reflective of the broad range of places, events, pastimes, and groups that make up the South Carolina experience. The legislature's purpose in passing the "I Believe" Act was to provide yet another option to another group representing an important

element of the South Carolina experience. A state's given purpose in passing a statute is entitled to deference, and the Respondents have not presented any evidence from which to conclude that the State's purpose was anything less than legitimate. Again, the fact that Christianity was not the first worldview to receive the legislature's approval for specialty license plates speaks volumes about the State's true intentions.

Second, the "I Believe" Act neither advances nor inhibits religion. The fact that the secondary effect of a law might further a religious interest does not render the law unconstitutional, as long as the primary effect of the law is to favor a secular purpose. The primary purpose of the "I Believe" Act is to provide South Carolinians with another option when choosing their license plates. Any benefit actually conferred upon Christianity is, therefore, at most a secondary effect.

Finally, the "I Believe" Act does not foster an excessive entanglement between government and religion. "Entanglement" properly refers to institutional entanglement, whether it be the government intruding into church matters, or the government allowing a church to intrude into governmental matters. There is no institutional entanglement in the instant case. The mere fact that the state legislature may, from time to time, be faced with a request by a religious group for a specialty license plate does not amount to excessive entanglement.

With regard to their First Amendment free speech claim, the Respondents lack standing to bring such a challenge because they cannot establish the existence of a cognizable injury-in-fact. The First Amendment protects the right to speak, but it does not give one the right to stop others with opposing viewpoints from speaking. The Respondents have alleged that the legislative process for creating specialty license plates vests legislators with unbridled discretion to control the license plate forum, but they have not alleged that they sought and were denied

access to that forum. Absent such a showing, any claim of First Amendment viewpoint discrimination is speculative, at best. Once again, the fact that the South Carolina General Assembly has in the past exhibited tolerance towards other viewpoints shows that there is no serious danger of viewpoint suppression in the instant case.

However, even if the Respondents could establish standing for their free speech claim, the "I Believe" Act does not violate the First Amendment because it constitutes purely governmental speech. This Court established in *Johanns v. Livestock Marketing Association*, 544 U.S. 550 (2005), that whether or not speech is to be classified as governmental depends on the level of control that the government exercises in creating and disseminating the message. Following *Johanns*, the first court to address the issue of whether or not a legislatively-created specialty license plate constituted governmental speech or not was the Sixth Circuit Court of Appeals in *ACLU of Tennessee v. Bredesen*, 441 F.3d 370. The *Bredesen* court determined that where the state sets an overarching message and wields final approval authority over every word used, that message is the state's.

The Respondents, as did the Fourth Circuit Court of Appeals, relied on the Fourth Circuit decision in *Planned Parenthood of South Carolina v. Rose*, 361 F.3d 786 (4th Cir. 2004) for the proposition that legislatively-created license plates are not governmental speech, but are instead "mixed" governmental-private speech for which the government may not discriminate on the basis of viewpoint. However, the precedential value of *Rose* was extinguished when this Court subsequently decided *Johanns*, which rejected two of the four prongs of the *Rose* analysis. Therefore, the Court of Appeals erred in relying on *Rose* in the face of this Court's holding in *Johanns.*

Because the Court of Appeals did not apply the correct test, it improperly concluded that the message conveyed by the State of South Carolina through the "I Believe" Act was "mixed" speech. Under *Johanns* it is clear that the act was purely governmental. The State of South Carolina chose "I Believe" as its overarching message and approved every word to be disseminated. Because the "I Believe" Act constitutes purely governmental speech, it is not subject to the First Amendment's prohibition against viewpoint discrimination.

ARGUMENT

I. The endorsement test is the appropriate standard by which to judge whether or not the "I Believe" Act violates the Establishment Clause.

The Court of Appeals relied on Fourth Circuit precedent in subjecting the "I Believe" Act to a three-prong test originally developed by this Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). *See also Lambeth v. Bd. of Comm'rs.*, 407 F.3d 266, 268 (4th Cir. 2005); *Koenick v. Felton*, 190 F.3d 259, 265 (4th Cir. 1999). Though ostensibly simple and straightforward, *Lemon* has, in practice, proven difficult to apply consistently, and has been widely criticized by judges and commentators alike. *See*, *e.g.*, *McCreary County v. ACLU*, 545 U.S. 844, 890-91 (2005) (Scalia, J., dissenting) ("What distinguishes the rule of law from the dictatorship of a shifting Supreme Court majority is the absolutely indispensable requirement that judicial opinions be grounded in consistently applied principle."); *Wallace v. Jaffree*, 472 U.S. 38, 112 (1985) (Rehnquist, J., dissenting) (the *Lemon* test "[h]as no basis in the history of the amendment it seeks to interpret, is difficult to apply and yields unprincipled results. . . ."); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 319-320 (2000) (Rehnquist, J., dissenting) (collecting opinions criticizing *Lemon*); *Widmar v.Vincent*, 454 U.S. 263, 282 (1981) (White, J., dissenting) ("[E]stablishment Clause limits on state action which incidentally aids religion are not as strict as

the Court has held."); Thomas C. Marks, Jr. & Michael Bertolini, *Lemon is a Lemon: Toward a Rational Interpretation of the Establishment Clause*, 12 BYU J. PUB. L. 1 (1997); Kristin M. Engstrom, Note, *Establishment Clause Jurisprudence: The Souring of Lemon and the Search for a New Test*, 27 PAC. L. J. 121 (1995).

While it has never been invalidated, *Lemon* today, in the words of this Court, "provides no more than a helpful signpost in dealing with Establishment Clause challenges." *Hunt v. McNair*, 413 U.S. 734, 741 (1973); *see also Lynch v. Donnelly*, 465 U.S. 668, 679 ("[w]e have repeatedly emphasized our unwillingness to be confined to any single test or criterion in this sensitive area.").

Aside from *Lemon*, the primary alternative test used by this Court to analyze Establishment Clause issues is the endorsement test.[1] In 1984 Justice O'Connor, through her concurring opinion in the case of *Lynch v. Donnelly*, first suggested a new approach to Establishment Clause jurisprudence on the grounds that "[i]t never has been entirely clear . . . how the three parts of the [*Lemon*] test relate to the principles enshrined in the Establishment Clause." *Lynch*, 465 U.S. at 688-89. Justice O'Connor believed that a better approach to analyzing Establishment Clause issues should "[f]ocus[ ] on institutional entanglement and on endorsement or disapproval of religion . . . ." *Id.* at 689. "Institutional entanglement," thus defined, means "[e]ntanglement with religious institutions, which may interfere with the independence of the institutions, give the institutions access to government or governmental powers not fully shared by nonadherents of the religion, and foster the creation of political

[1] A third approach, the coercion test, considers whether or not the government has coerced anyone to support or participate in religion or its exercise. *Lee v. Weisman*, 505 U.S. 577, 586 (1992). This approach, however, is not readily applicable to the instant case because it was developed for and has been applied primarily to instances of prayer in public schools. *See*, *e.g.*, *Weisman*; *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Mellen v. Bunting*, 327 F.3d 355 (4th Cir. 2003).

constituencies defined along religious lines." *Id.* at 688. "Endorsement" is that which "[s]ends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Id.* Endorsement is to be gauged by the standard of a "reasonable observer," "[a]ware of the history of the conduct in question, and . . . understand[ing] its place in our Nation's cultural landscape." *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 35 (2004) (O'Connor, J., concurring).

The endorsement test has been widely promoted, both for remaining truer than *Lemon* to the actual intent of the Establishment Clause and for reducing the practical difficulties with implementation that have plagued the *Lemon* test, thereby resulting in more consistent, reliable results. *See* Elizabeth A. Harvey, Note, *Freiler v. Tangipahoa Parish Bd. of Educ.: Squeeze the Lemon Test Out of Establishment Clause Jurisprudence*, 10 GEO. MASON L. REV. 299 (2001). Specifically, the endorsement test has been praised for the contextual nature of its inquiry, which allows it to be readily applied to a wide range of situations, unlike the relatively rigid "effects" prong of the *Lemon* test. *See* Deborah Jones Merritt & Daniel C. Merritt, *The Future of Religious Pluralism: Justice O'Connor & the Establishment Clause*, 39 ARIZ. ST. L. J. 895, 936-944 (2007). The endorsement test has also been praised for the emphasis that it places on preventing not just government discrimination between religious sects, but government preference for religious belief over non-belief also, as well as for promoting pluralism through its emphasis on how a message or action is perceived by a non-adherent, as opposed to *Lemon's* rigid categories of allowable and prohibited behavior. *Id.* Unlike *Lemon*, this flexible approach allows for some partnership between government and religious organizations, but holds those organizations accountable for implementing programs in ways that respect this Nation's religious

diversity and do not discriminate on the basis of other people's faith (or lack thereof). *Id. See Bowen v. Kendrick*, 487 U.S. 589, 623 (1988) (O'Connor, J., concurring) ("[p]artnership between governmental and religious institutions . . . need not result in constitutional violations, despite an undeniably greater risk. . . .").

The endorsement test candidly recognizes that in a society such as ours it is impossible to fully separate government from religion. Unlike the *Lemon* test's clumsy, categorical attempt at completely walling off government and religion, the endorsement test offers a nuanced, contextualized approach to determining when the government has actually crossed the line laid down in the Establishment Clause. The endorsement test is, therefore, superior to the *Lemon* test. The Court should apply the endorsement test to the instant case and find that the State of South Carolina has not engaged in religious endorsement.

II. Applying the endorsement test to the instant case, it is clear that the "I Believe" Act does not constitute an endorsement of religion by the State of South Carolina.

Lynch v. Donnelly, the case in which Justice O'Connor first annunciated the endorsement test, addressed the issue of whether or not a crèche as part of a town's annual Christmas display violated the Establishment Clause. *Lynch*, 465 U.S. at 671. This Court recognized the "[t]ension between the objective of preventing unnecessary intrusion of either the church or the state upon the other, and the reality that . . . total separation of the two is not possible," *Id.* at 672, and held that "[n]ot every law that confers an 'indirect,' 'remote,' or 'incidental' benefit upon [religion] is, for that reason alone, constitutionally invalid." *Id.* at 683. This Court found that the crèche is a "passive" symbol, which is no more identified with the Christian faith than Sunday closing laws or legislative prayers, activities which this Court has allowed under the Establishment Clause. *Id.* at 685-86. *See also Marsh v. Chambers*, 463 U.S. 783, 791 (1983) ("[l]egislative prayer offers no more potential for establishment than the provision of school transportation [to

parochial schools], beneficial grants to higher [religious] education, or tax exemptions for religious organizations"). Therefore, the crèche was not found to violate the Establishment Clause. *Id.* at 687.

In 1989 the majority of this Court adopted the endorsement test in *County of Allegheny v. ACLU*, 492 U.S. 573 (1989). This Court ultimately concluded in that case that the display of a crèche inside a county courthouse violated the Establishment Clause, while the display of a Christmas tree and menorah did not. *Id.* at 601-602, 620. This Court reasoned that a reasonable non-adherent would not perceive government endorsement of religion from a Christmas tree or menorah, symbols which have become largely secularized in our society, *Id.* at 616, but would perceive a government endorsement of religion from a crèche displaying the message "Glory to God for the birth of Jesus Christ." *Id.* at 601-602.

The discrepancy between the holdings in *Lynch* and *Allegheny County* is a primary example of the need for a contextualized approach to Establishment Clause cases. Alone, a crèche might be a passive symbol, but the addition of an explicitly religious message can change the analysis substantially. The primary weakness of the *Lemon* test is that it has no way of adequately addressing this level of nuance. Under the "effects" prong of the *Lemon* test, any object, message, or action that has the primary effect of advancing religion should ostensibly be found unconstitutional. However, such a logical extreme is inconsistent with this Court's prior holdings on a wide range of issues, *see*, *e.g.*, *Marsh v. Chambers*, 463 U.S. 783, 786 (state legislature's opening daily sessions with a paid chaplain upheld as a practice "deeply embedded in the history and tradition of this country."); *Van Orden v. Perry*, 545 U.S. 677, 690 (historical nature of a Ten Commandments monument grounds for finding that it did not violate the Establishment Clause), which is why the *Lemon* test has proven so difficult to apply consistently.

The endorsement test's focus on the perception of a reasonable observer allows such minute distinctions to be made within a consistent framework.

In *ACLU of Ohio v. Capitol Square Review & Advisory Bd*., 243 F.3d 289 (6th Cir. 2001) the Sixth Circuit considered the issue of whether or not Ohio's state motto, "With God All Things Are Possible," violated the Establishment Clause. *Id.* at 291. The Sixth Circuit found that while the state motto was certainly derived from the Christian tradition, "[n]o well-informed observer could reasonably take Ohio's message to be an official endorsement of the Christian religion." *Id.* at 305. Relying heavily on the historical origins of the Establishment Clause, the court found that "[t]he principal thrust of the prohibition was to prevent any establishment by the national government of an official religion . . . ," *Id.* at 293, and that the Ohio state motto did not assert a preference for one religious denomination or sect above others, and therefore did not amount to endorsement on the part of the state. *Id.* at 299; *see also Van Orden v. Perry*, 545 U.S. at 691 (placement of Ten Commandments monument among seventeen other monuments and historical markers located on the same grounds a mere "passive" reference to religion); *Marsh v. Chambers*, 463 U.S. at 792 (Nebraska legislature's practice of opening legislative sessions with prayer by chaplain paid with public funds "[s]imply a tolerable acknowledgment of beliefs widely held among the people of this country.").

In the instant case, not only is there no institutional entanglement between the State of South Carolina and any church or religious organization, but the State of South Carolina has not endorsed the Christian religion, either. The "I Believe" license plate is a passive symbol, no more an endorsement of religion than the crèche in *Lynch*, Ohio's state motto in *Capitol Square*, our national motto of "In God We Trust," or the crier who begins each session of this Court with the words "God save the United States and this honorable court." It was designed to give the

drivers of South Carolina yet another option to choose from in selecting automobile license plates, but it does not endorse Christianity any more than South Carolina's "First in Golf" specialty license plate promotes golf above all other sports, or South Carolina's "Working for the Wild Turkey" specialty license plate promotes turkeys above all other animals. It is designed merely as an "acknowledgment of beliefs widely held among the people" of South Carolina, and any intangible benefit conferred upon Christianity by such an acknowledgment is no more than a secondary, incidental effect. Most importantly, the fact that the State of South Carolina actually approved the issuance of a license plate for the Council for Secular Humanism before it passed the "I Believe" Act shows that the state's intention is not to favor any one religion or world view over another. Therefore, the Court should find that the "I Believe" Act is not an endorsement of religion by the State of South Carolina.

A. Even if the *Lemon* test is applied the "I Believe" Act passes constitutional muster.

The *Lemon* test consists of three prongs. A government action, in order to be legitimate, must: (1) have a secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) not foster an excessive governmental entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. at 612-613. The "I Believe" Act prevails on all three inquires.

1. The "I Believe" Act has a secular purpose.

The first prong of the *Lemon* test requires that the governmental action at issue must have been done for a legitimate, non-religious purpose, and that the purported secular purpose not be pretextual. *Lambeth v. Bd. of Comm'rs.*, 407 F.3d at 270. If there is more than one arguable purpose for the action, the primary purpose must be secular. *McCreary County v. ACLU*, 545 U.S. at 864. The state's "characterization of its purpose is entitled to deference," and may be

challenged only if it is clearly a "sham." *Mellen v. Bunting*, 327 F.3d 355, 372-373 (4th Cir. 2003).

In *McCreary County* this Court found such a "sham" to exist. *McCreary County*, 545 U.S. at 881. In that case, though, not only was the courthouse display at issue highly sectarian, containing extensive religious references including a "[c]laim about the embodiment of ethics in Christ," *Id.* at 870, but the defendant had twice altered the display in an attempt to give it the appearance of having a secular purpose. *Id.* at 869-874.

In *Lambeth*, on the other hand, the Fourth Circuit found that a legitimate secular purpose existed for a defendant county's having inscribed the words "In God We Trust" on its county administrative building, namely, to display the national motto. *Lambeth*, 407 F.3d at 270. The court took specific note of the plaintiff's "[f]ail[ure] to allege that the [county] Board's discussion of the phrase 'In God We Trust' as the national motto was a pretext for religious motivations. . . ." *Id.*

The State of South Carolina provides its motorists with a wide variety of license plates, reflective of the broad range of places, events, pastimes, and groups that make up the South Carolina experience. The legislature's purpose in passing the "I Believe" Act was to provide yet another option to another important group representing an important element of the South Carolina experience. The Respondents have not presented any evidence to show that the State's purpose was anything less than legitimate. Furthermore, the fact that Christianity was not the first religion or worldview to receive the legislature's approval for a specialty license place speaks volumes about the State's true intentions. Therefore the Court should find that a legitimate secular purpose exists for the "I Believe" Act.

2. The "I Believe" Act neither advances nor inhibits religion.

Under the second prong of the *Lemon* analysis, a court considers the actual effect of a legislative enactment, regardless of the state's intentions. If a law's "principle or primary effect" advances or inhibits religion, the law in unconstitutional. *Lemon*, 403 U.S. at 612. The fact that the secondary effect of a law might further a religious interest does not render the law unconstitutional, as long as the primary effect of the law is to favor a secular purpose. *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002).

Zelman involved a challenge to an Ohio public school voucher program that permitted parents of public schoolchildren to enroll their children in any school of their choosing, including parochial schools. *Zelman*, 536 U.S. at 645-646. This Court held that because the act in question was one designed to give parents a genuine choice among options public and private, secular and religious, *Id.* at 653, its primary effect was not to further a religious interest, and any such actual furtherance was merely a secondary effect. *Id.* at 652-653. This Court took special note of the fact that there were no financial incentives to skew the program toward parochial schools, and that in fact there were disincentives to such a choice as private schools received less government assistance than community or magnet schools. *Id.* at 653-654.

The primary purpose of the "I Believe" Act is to provide South Carolinians with another option when choosing their license plates. Just as in *Zelman*, South Carolinians are given a genuine choice among a wide variety of license plates. There is no financial incentive to purchase the "I Believe" license plate, and, like *Zelman*, there is actually a financial disincentive to purchase the "I Believe" license plate because it costs more than a standard-issue license plate. Therefore, any benefit actually conferred upon Christianity by the "I Believe" license plate is at

most a secondary effect. Therefore, the Court should find that the second prong of the *Lemon* test has been satisfied.

3. The "I Believe" Act does not foster an excessive governmental entanglement with religion.

In determining whether or not entanglement is excessive, courts look to "[t]he character and purposes of the institutions that are benefitted, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority." *Lemon*, 403 U.S. at 615. Entanglement can be caused either by government intruding into church matters, *see Lemon*, 403 U.S. at 627 (invalidating a state law authorizing salary supplements to teachers in parochial schools on the grounds that the program would have required extensive government surveillance to ensure that the funds were not expended for religious purposes) or when the government allows the church to intrude into governmental matters. *See Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982) (finding a state statute permitting the governing body of any church within five hundred feet of a place applying for a liquor license to essentially deny the application as violating the excessive entanglement prong of *Lemon*).

There is no entanglement in the instant case. The Court of Appeals found excessive entanglement to exist because "[t]he State faces the possibility of reviewing other requests for religious tags." Record 15. However, the mere possibility that the state legislature may, from time to time, be faced with a request by a religious group for a specialty license plate does not amount to the kind of institutional entanglement that is consistent with this Court's prior holdings. No institution beyond the State of South Carolina is involved in the "I Believe" Act. The State is not providing aid to anyone, and there is no partnership between the State and any religious authority. The State of South Carolina is not intruding on any church, and no church is

involved in carrying out the "I Believe" Act. Therefore, the third prong of the *Lemon* test is satisfied.

III. The Respondents lack standing to assert a free speech claim pursuant to the First Amendment because they cannot establish the existence of cognizable injury-in-fact.

Standing to assert a claim in federal court is governed by a three-part test established by this Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Heckler v. Matthews*, 465 U.S. 728, 738 (1984). The plaintiff must be able to show: (1) that he has suffered an injury-in-fact that is: (a) concrete and particularized; and (b) actual or imminent, not conjectural or hypothetical; (2) that the injury is fairly traceable to conduct of the defendant; and (3) that it is likely, not just merely speculative, that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-61. It is with regard to the injury-in-fact requirement that the Respondents cannot establish standing for their First Amendment free speech claim.

In reversing the decision of the District Court, the Court of Appeals relied on *Suhre v. Haywood County*, 131 F.3d 1083 (4th Cir. 1997) for the proposition that any personal contact with a public religious display satisfies the injury-in-fact requirement for standing in Establishment Clause cases. The instant case, however, is distinguishable from *Suhre* in that it involves both an Establishment Clause claim and a First Amendment free speech claim. While South Carolina does not contest the existence of standing for the Respondents to assert a claim pursuant to the Establishment Clause, the Respondents have not established the requisite standing to pursue a free speech claim.

In *Women's Emergency Network v. Bush*, 323 F.3d 937 (11th Cir. 2003), the Eleventh Circuit considered a challenge to a statute creating a "Choose Life" automobile license plate in the State of Florida. The court held that the plaintiff in that case had not sufficiently established the existence of an injury-in-fact because the plaintiff had neither applied for nor sought a similar

pro-choice license plate. *Id.* at 946-47. The court held that "Nothing in the Choose Life statute prevents Appellants from applying for or gaining entrance to the specialty license plate forum. The First Amendment protects the right to speak; it does *not* give Appellants the right to stop others with opposing viewpoints from speaking." *Id.* at 947.

In *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998), this Court upheld a congressional statute which directed the chairperson of the National Endowment for the Arts, in establishing regulations and procedures for the approval of grant applications, to take into account general standards of decency and respect for the diverse beliefs and values of the American public. *Id.* at 580-81. The statute was challenged on the grounds that it vested decision makers with unbridled discretion to approve or deny applications. *Id.* at 583. This Court determined that the government did not engage in censorship of ideas merely by exercising discretion as to which arts projects it would fund and which it would not. *Id.* This Court held that the plaintiffs would need to allege that the danger of viewpoint suppression was both "[m]ore evident and more substantial." *Id.* at 582.

Analogous to *Women's Emergency Network*, the Respondents have not established a cognizable injury-in-fact with regard to the First Amendment's free speech guarantees because they have not alleged that they sought and were denied access to the specialty license plate forum. Absent such a showing, any claim of First Amendment viewpoint discrimination is speculative, at best. The Respondents have alleged that "the legislative process for enacting specialty license plates impermissible [sic] vest [sic] legislators with unbridled discretion and subjects to majoritarian vote the availability of access to the specialty-license-plate forum," Record 6, n. 2, but, like *Finley*, the mere fact that the State of South Carolina has issued an "I Believe" license plate does not mean that any other viewpoint is being suppressed. Record 9.

Indeed, the willingness of the South Carolina legislature to approve specialty license plates for The Council of Secular Humanism bearing the message "In Reason We Trust" suggest just the opposite. Because any claim of discrimination is no more than hypothetical, the Respondents have not asserted a sufficient injury-in-fact with regard to free speech.

IV. The "I Believe" Act does not violate the First Amendment because it is purely governmental speech.

Even assuming, *in arguendo*, that the Respondents could establish standing to assert a free speech claim, the Court should find that no First Amendment violation has taken place because the speech involved is purely governmental. The first step in determining whether or not a state has engaged in impermissible viewpoint discrimination under the First Amendment is to classify the relevant message as either government speech or private speech. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 542-43 (2001); *see also Sons of Confederate Veterans, Inc. v. Comm'r. of Va. Dept. of Motor Vehicles*, 288 F.3d 610, 616 (4th Cir. 2002). The government may not discriminate based on viewpoint when it regulates private speech, *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995), but when the government speaks for itself its speech is exempt from First Amendment scrutiny. *Johanns v. Livestock Marketing Association*, 544 U.S. 550, 562 (2005). *See also Page v. Lexington County Sch. Dist. One*, 531 F.3d 275, 280 (4th Cir. 2008) ("'the Government's own speech . . . is exempt from First Amendment scrutiny.'"); *Rosenberger*, 515 U.S. at 833 (when the government speaks for itself if "[m]ay take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted . . . ."). When the government creates and manages its own program, it may determine the contents of that program. *Rust v. Sullivan*, 500 U.S. 173, 194 (1991).

This Court established in the case of *Johanns v. Livestock Marketing Association*, 544 U.S. 550, that whether or not speech is to be classified as governmental depends on the level of

control that the government exercises in creating and disseminating the message. *Id.* at 562. *Johanns* involved a constitutional challenge to a federal program promoting and marketing beef products through the imposition of an assessment on all sales and importation of cattle. *Id*. at 553. Regarding the *Johanns* plaintiffs' contention that the assessment effectively compelled the subsidization of speech to which they objected, *Id.* at 556, this Court found it necessary to differentiate between a true "compelled-speech" case, where an individual is obliged personally to express a message he disagrees with, and a "compelled-subsidy" case, in which an individual is required by the government to subsidize a message he disagrees with. *Id.* at 557. The former is impermissible; the latter is perfectly acceptable. *Id.* at 557-59. This Court held that "'Compelled support of government'—even those programs of government one does not approve of—is of course perfectly constitutional, as every taxpayer must attest. And some programs involve, or entirely consist of, advocating a position." *Id.* at 559 (citing *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U.S. 217, 229 (2000). This distinction thus necessitated a method for ascertaining what exactly constitutes government, as opposed to private speech. This Court held that it was the level of control exercised by the government which was ultimately determinative, *Id.* at 561, stating that where "[t]he government sets the overall message to be communicated and approves every word that is disseminated, it is not precluded from relying on the government-speech doctrine merely because it solicits assistance from non-governmental sources in developing specific messages." *Id.* at 562. *See also Page v. Lexington County Sch. Dist. One*, 531 F.3d 275, 281 (4th Cir. 2008) ("Whether speech is government speech depends on the government's ownership and control of the message . . . ."). Ultimately, this Court concluded that governmental speech is subject only to democratic accountability. *Page*, 531 F.3d at 281; *see also Sons of Confederate Veterans*, 288 F.3d at 618

("The rationale behind the government's authority to draw otherwise impermissible viewpoint distinctions in the government speech context is the accountability inherent in the political process").

In applying this definition to the facts of *Johanns*, this Court concluded that the message set out in the beef promotions at issue was from beginning to end the Federal Government's message. *Id.* at 560. The Federal Government specified what the promotional campaigns were to contain, *Id.* at 561, Congress set the overarching message and some of its elements, even though it left the development of the remaining details to an entity whose members were accountable to the Secretary of Agriculture, *Id.*, and the Secretary of Agriculture exercised final approval authority over every word used in the promotional campaign. *Id.*

The first court to address the specific issue of a legislatively created license plate subsequent to *Johanns* was the Sixth Circuit in *ACLU of Tennessee v. Bredesen*, 441 F.3d 370 (6th Cir. 2006). The State of Tennessee passed a law authorizing the issuance of a specialty "Choose Life" automobile license plate. *Id.* at 371-72. The ACLU challenged the statute claiming impermissible First Amendment viewpoint discrimination. *Id.* The Sixth Circuit found that in light of this Court's holding in *Johanns*, "Choose Life" was properly classified as governmental speech. *Id.* at 376. The court found it dispositive that "[t]he Tennessee legislature chose the "Choose Life" plate's overarching message and approved every word to be disseminated," even though "Tennessee . . . left some of the 'remaining details to an entity whose members are answerable to the State government," and "Tennessee delegate[ed] partial responsibility for the design of the plate to [a pro-life organization], but retain[ed] a veto over its design." *Id.* All of this, in the view of the Sixth Circuit, amounted to Tennessee's "wield[ing]

‘final approval authority over every word used,’” *Id.*, thereby resulting in “Choose Life” being Tennessee’s own message. *Id.*

To the *Bredesen* court, the fact that the “Choose Life” license plate was only one of many diverse license plates offered by the State of Tennessee did not render the license plate program a forum for private speech. *Id.* at 376. The *Bredesen* court found that “[t]here is nothing implausible about the notion that Tennessee would use its license plate program to convey messages regarding over one hundred groups, ideologies, activities, and colleges. Government in this age is large and involved in practically every aspect of life.” *Id.* The court noted that holding a state’s specialty license plate program to create a forum for private speech would result in government not being able to prevent groups such as the Ku Klux Klan or the American Nazi Party from obtaining specialty license plates; groups which had, in fact, applied for specialty license plates and been rejected by the State of Tennessee. *Id.* at 376-77.

The *Bredesen* court also held that the government does not create a forum for First Amendment expression when it seeks to have private entities voluntarily disseminate its message. *Id.* at 378. The court found that if this proposition were accepted, it would lead to an absurd result as it would “force the government to produce messages that fight against its policies.” *Id.* at 378-79.

> “[G]overnment can distribute pins that say ‘Register and Vote,’ issue postage stamps during WWII that say ‘Win the War,’ and sell license plates that say ‘Spay or Neuter your Pets’ . . . but that right cannot conceivably require the government to distribute ‘Don’t Vote’ pins, to issue postage stamps in 1942 that say ‘Stop the War,’ or to sell license plates that say ‘Spaying or Neutering your Pet is Cruel.’” *Id.* at 379.

The *Bredesen* court also drew, to a certain extent, on this Court’s decision in *Wooley v. Maynard*, 430 U.S. 705 (1977). The issue in that case was whether or not the State of New Hampshire could prosecute an individual for covering up the state motto “Live Free or Die” on

the state's standard automobile license plates. *Id.* at 709. This Court held that New Hampshire could not prosecute an individual for refusing to display a message espousing an ideological point of view with which they disagreed, *Id.* at 717, but as the *Bredesen* court noted, "[n]owhere did [this Court] suggest that the State's message could not be so disseminated by those who did not object to the State's motto, or even hint that the State could not put the message on standard-issue license plates." *Bredesen*, 441 F.3d at 377-78.

Several courts have attempted to criticize the logic of the *Bredesen* decision. In *Arizona Life Coalition, Inc. v. Stanton*, 515 F.3d 956, 964-65 (9th Cir. 2008), for example, the Ninth Circuit attempted to distinguish the facts in *Bredesen* from those in *Johanns* based on the fact that "[s]pecialty license plate programs do not raise issues regarding 'compelled speech' or a 'compelled subsidy.'" However, the *Bredesen* court did consider the voluntary nature of the "Choose Life" license plate but determined that *Johanns* still controlled on the issue of whether speech is to be classified as government or private. *See Bredesen*, 441 F.3d at 378-79. The Seventh Circuit in *Choose Life Illinois v. White*, 547 F.3d 853, 863-64 (7th Cir. 2008) did not rely on *Bredesen*, finding that specialty license plates do create a government-sponsored forum in which the government may not discriminate on the basis of viewpoint. As the *Bredesen* court found, however, such a conclusion cannot be reconciled with *Johanns'* mandate that when the government sets the message and exercises complete control over its dissemination the message is purely governmental.

The Respondents, as did the Court of Appeals, rely on *Planned Parenthood of South Carolina v. Rose*, 361 F.3d 786 (4th Cir. 2004), as Fourth Circuit precedent for the proposition that legislatively created specialty automobile license plates represent "mixed" governmental-

private speech and are, therefore, subject to the First Amendment's prohibition against viewpoint discrimination. *Id.* at 798.

In *Rose*, the Fourth Circuit identified a third category of speech existing somewhere in between that which is purely governmental and that which is purely private and classified such speech as "mixed" speech. *Id.*at 795. The State of South Carolina legislatively authorized the creation of a "Choose Life" license plate, which was challenged on the grounds that by not offering a comparable pro-choice license plate the state had engaged in First Amendment viewpoint discrimination. *Id.* at 787. The *Rose* court relied heavily on the Fourth's Circuit's earlier decision in *Sons of Confederate Veterans v. Va. Dept. of Motor Vehicles*, 288 F.3d 610 (4th Cir. 2002), another specialty license plate dispute, in which the Fourth Circuit, noting that "[n]o clear standard has yet been enunciated in our Circuit or by the Supreme Court for determining when the government is 'speaking' and thus able to draw viewpoint-based distinctions, and when it is regulating private speech and thus unable to do so," *Id.* at 618, adopted a four part test in order to ascertain whether speech was governmental, private, or "mixed." *Id.* That test considered: (1) the central purpose of the program in which the speech in question occurs; (2) the degree of editorial control exercised by the government or private entities over the content of the speech; (3) the identity of the literal speaker; and (4) whether the government or the private entity bears the ultimate responsibility for the content of the speech. *Id.* Applying these principles to the factors present is *Rose*, the Fourth Circuit found that the first two factors weighed in favor of governmental speech, while the second two weighed in favor of private speech. *Rose*, 361 F.3d at 793-94. The court thus held that the legislatively created specialty license plates at issue constituted "mixed" governmental-private speech, in which the state sets a message but restricts the ability of those who disagree with its message to express an

opposing point of view. *Id.* As such, the Fourth Circuit ruled that "mixed" speech is essentially the same as private speech in that it must remain viewpoint neutral.

However, the precedential value of *Rose* was extinguished when this Court subsequently decided *Johanns v. Livestock Marketing Ass'n*., 544 U.S. 550. *See also Page v. Lexington County Sch. Dist. One*, 531 F.3d at 281 ("After we [the Fourth Circuit] identified these nonexclusive factors [in *Rose*], the Supreme Court issued its decision in *Johanns*, which distilled them, particularly in cases involving the government's use of third party messages, focusing on (1) the government's *establishment* of the message, and (2) its *effective control* over the content and dissemination of the message.").

Noticeably absent from this Court's definition of governmental speech in *Johanns* was any reference to the third and fourth factors of the Fourth Circuit's analysis in *Rose*, namely, the identity of the literal speaker or whether the government or the private entity bears the ultimate responsibility for the content of the speech. Importantly, it was these latter two factors which the Fourth Circuit characterized as "weighing in favor of private speech," and therefore warranting a "mixed," as opposed to governmental, speech classification. *Rose* 361 F.3d at 793-94.

Therefore, the Court of Appeals erred in relying on *Rose* in the face of this Court's subsequent holding in *Johanns*. Because the Court of Appeals did not apply the correct test, it improperly concluded that the message conveyed by the State of South Carolina through the "I Believe" Act was "mixed" speech. Under *Johanns* it is clear that the Act was purely governmental. The State of South Carolina chose "I Believe" as its overarching message and approved every word to be disseminated. Record 3. And while South Carolina left some remaining details to an entity whose members are answerable to the State government, the DMV, the South Carolina legislature retained a veto over the "I Believe" license plate's ultimate design.

Record 10. Therefore, just as in *Bredesen*, the State of South Carolina "wield[s] 'final approval authority over every word used,'" resulting in "I Believe" being South Carolina's own message.

Analogous to *Bredesen*, the fact that the "I Believe" license plate is one of many diverse license plates offered by the State of South Carolina does not render it a forum for private speech. *See also Choose Life Ill. Inc., v. White,* 547 F.3d at 865 ("[w]e conclude that specialty license plates are a forum of the nonpublic variety."); *Perry v. McDonald*, 280 F.3d 159, 167 (2nd Cir. 2001) (vanity license plates are not a public forum). The "I Believe" Act originated in and was the sole product of the South Carolina General Assembly, and the fact that it is not the only license plate produced by the state does not make it any less the state's message.

Furthermore, as the *Bredesen* court also found, the government does not create a forum for First Amendment expression when it seeks to have private entities voluntarily disseminate its message. The fact that South Carolinians are not required to purchase and display the "I Believe" license plate, as was the plaintiff in *Wooley*, does not mean that the state cannot make its message available to those who choose to display it. Therefore, the Court should find that the "I Believe" Act constitutes purely governmental speech, and is therefore not subject to the First Amendment's prohibition against viewpoint discrimination.

CONCLUSION

For the foregoing reasons, the State of South Carolina respectfully requests that this honorable Court overturn the decision of the United States Court of Appeals for the Fourth Circuit and to reinstate the holding of the United States District Court for the District of South Carolina, finding that the "I Believe" is constitutional on its face.

Certificate of Service

I hereby certify that on this 22nd day of January, 2009, I filed with the CSOL Moot Court Board the required copies of this Brief for the Petitioner with original certification pursuant to Rule IV(B)(4) and further certify that I submitted by e-mail as an electronic attachment my Measuring Brief to Prof. Miller W. Shealy, Jr.

Appendix A

§ 56-3-8100. Special license plates production and distribution guidelines.

(A) Before the Department of Motor Vehicles produces and distributes a special license plate created by the General Assembly after January 1, 2006, it must receive:

(1) four hundred prepaid applications for the special license plate or four thousand dollars from the individual or organization seeking issuance of the license plate;

(2) a plan to market the sale of the special license plate which must be approved by the department; and

(3) the emblem, a seal, or other symbol to be used for the plate and, if necessary, written authorization for the department to use a logo, trademark, or design that is copyrighted or registered. If the individual or organization seeking issuance of the plate submits four thousand dollars, the Comptroller General shall place that money into a restricted account to be used by the department to defray the initial cost of producing the special license plate.

(B) The fee for all special license plates created by the General Assembly after January 1, 2006, is the regular biennial registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the plate. The initial fee amount requested can only be changed every five years from the first year the plate is issued. Each special license plate must be of the same size and general design of regular motor vehicle license plates. Each special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month the special license plate is issued.

(C) Of the additional fee collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates. Any of the remaining fee not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate.

(D) If the department receives less than three hundred biennial applications and renewals for a particular special license plate, it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.

(E) If the department receives less than three hundred biennial applications and renewals for plates created pursuant to Article 12, Chapter 3, Title 56; Article 14, Chapter 3, Title 56; Article 31, Chapter 3, Title 56; Article 39, Chapter 3, Title 56; Article 40, Chapter 3, Title 56; Article 43, Chapter 3, Title 56; Article 45, Chapter 3, Title 56; Article 49, Chapter 3, Title 56; Article 50, Chapter 3, Title 56; Article 60, Chapter 3, Title 56; Article 70, Chapter 3, Title 56; Article 72, Chapter 3, Title 56; and Article 76, Chapter 3, Title 56, it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.

(F) The provisions contained in subsection (A)(1) and (2) do not apply to the production and distribution of the Korean War Veterans Special License Plates contained in Article 68, Chapter 3, Title 56.

§ 56-3-8000. Non-profit organization license plates.

(A) The Department of Motor Vehicles may issue special motor vehicle license plates to owners of private passenger motor vehicles registered in their names which may have imprinted on the plate the emblem, a seal, or other symbol the department considers appropriate of an organization which has obtained certification pursuant to either Section 501(C)(3), 501(C)(7), or 501(C)(8) of the Federal Internal Revenue Code and maintained this certification for a period of five years. The biennial fee for this special license plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the plate. The initial fee amount requested may be changed only every five years from the first year the plate is issued. Of the additional fee collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates. Any of the remaining fee not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate. The special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

(B) Before the department produces and distributes a plate pursuant to this section, it must receive:

(1) four hundred or more prepaid applications for the special license plate or four thousand dollars from the individual or organization seeking issuance of the license plate; and

(2) a plan to market the sale of the special license plate which must be approved by the department. If the individual or organization seeking issuance of the plate submits four thousand

dollars, the Comptroller General shall place that money into a restricted account to be used by the department to defray the initial cost of producing the special license plate.

(C) If the department receives less than three hundred biennial applications and renewals for a particular plate authorized under this section, it shall not produce additional plates in that series. The department shall continue to issue plates of that series until the existing inventory is exhausted.

(D) License plates issued pursuant to this section shall not contain a reference to a private or public college or university in this State or use symbols, designs, or logos of these institutions without the institution's written authorization.

(E) Before a design is approved, the organization must submit to the department written authorization for the use of any copyrighted or registered logo, trademark, or design.

(F) The department may alter, modify, or refuse to produce any special license plate that it deems offensive or fails to meet community standards. If the department alters, modifies, or refuses to produce a special license plate, the organization or individual applying for the license plate may appeal the department's decision to a special joint legislative committee. This committee shall be comprised of two members from the House Education and Public Works Committee and two members from the Senate Transportation Committee.

Appointments to the joint legislative committee shall be made by the chairmen of the House Education and Public Works Committee and the Senate Transportation Committee. The department's decision may be reversed by a majority of the joint legislative committee. If the committee reverses the department's decision, the department must issue the license plate pursuant to the committee's decision. However, the provision contained in subitem (B) of this section also must be met. The joint legislative committee may also review all license plates issued by the department and instruct the department to cease issuing or renewing a plate it deems offensive or fails to meet community standards.

Section 56-3-10110. The Department of Motor Vehicles may issue 'I Believe' special motor vehicle license plates to owners of private motor vehicles registered in their names. The plate must contain the words 'I Believe' and a cross superimposed on a stained glass window. The biennial fee for this special license plate is the same as the fee provided in Article 5, Chapter 3 of this title. The guidelines for the production of this special license plate must meet the requirements contained in Section 56-3-8100."

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS §§ 1292(c) and (d) and 1295].

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

U.S. Const. amend. 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fed. R. App. P. Rule 4. Appeal as of Right--When Taken

(a) Appeal in a Civil Case.
(1) Time for Filing a Notice of Appeal.
(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.
(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) Filing Before Entry of Judgment. A notice of appeal filed after the court announces a decision or order -- but before the entry of the judgment or order -- is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B) (i) If a party files a notice of appeal after the court announces or enters a judgment -- but before it disposes of any motion listed in Rule 4