

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

M J NICHOLS COMPANY, INC., and

MICHAEL J. NICHOLS,

Plaintiffs,

Case No. 24-CV-566

v.

CRAIG THOMPSON, in his official capacity as
Secretary of the Wisconsin Department of
Transportation

Defendant.

COMPLAINT

Plaintiffs M J Nichols Company, Inc. and Michael J. Nichols, by their undersigned attorneys at the Wisconsin Institute for Law & Liberty, hereby allege as follows:

INTRODUCTION

1. The State of Wisconsin registers approximately 6.2 million vehicles statewide every year through the Wisconsin Department of Transportation's Division of Motor Vehicles ("DMV").¹

2. Those vehicles are required to display a registration plate (also known as a "license plate") with various letters and numbers which are used to identify that

¹ Wisconsin Department of Transportation, *DMV 2023 Facts and Figures*, at 90, <https://wisconsindot.gov/Documents/about-wisdot/newsroom/statistics/factsfig/2023ff.pdf>

vehicle. By default, a registration plate is issued with a randomized combination of letters and numbers, but applicants may request a specific phrase or combination of letters and numbers for their registration plate. This is called a “personalized registration plate,” which allows a driver to express themselves by showcasing their personality, sharing their beliefs, or celebrating the things that are important to them such as a favorite sports team or a beloved pet.

3. Drivers who wish to register a personalized plate must submit to the Wisconsin Department of Transportation (“DOT”) an application with the registration plate they wish to display, an explanation of its meaning, and pay an application fee. If approved, the driver then must pay an annual personalized plate fee, in addition to their registration fee, to register their vehicle with their chosen personalized plate.

4. Personalized registration plates are popular in Wisconsin. In 2023, the DMV processed 27,275 new personalized registration plate applications, and there are 234,568 total personalized plates which are issued statewide.²

5. But not just any personalized plate is allowed. Wis. Stat. §§ 341.145(7) and (8) empower staff at the DOT, under the direction and supervision of Defendant Thompson, to unilaterally decide which messages may be displayed, and which may not.

² *DMV 2023 Facts and Figures*, fn 1 *supra*, at 82-83.

6. DOT has a page on its website regarding personalized plates which repeats this restriction, stating: “DOT may refuse to issue, or may recall after issuance, a request that may be offensive to good taste or decency, misleading or conflicts with any other license plate.”³

7. Plaintiffs here are a business which owns a vehicle and that business’ sole owner and employee who sought and was denied a personalized registration plate from staff under Defendant Thompson’s supervision, in violation of the First Amendment, incorporated against the states through the Fourteenth Amendment.

8. This action challenges Wisconsin’s personalized registration plate statutes, specifically the Wisconsin DOT’s ability to deny plates “which may carry connotations offensive to good taste or decency,” Wis. Stat. § 341.145(7), and to rescind already issued plates which they determine to “may carry connotations offensive to good taste and decency.” Wis. Stat. § 341.145(8).

PARTIES

9. Plaintiff Michael J. Nichols is a United States Citizen and a resident of the Town of Lafayette, Chippewa County, Wisconsin. Through his company M J Nichols Company, Inc., he is the owner of a 2001 Pontiac Firebird Trans Am WS6.

10. Plaintiff Michael J. Nichols is the sole owner of Plaintiff M J Nichols Company, Inc., which is also headquartered in the Town of Lafayette, Chippewa County, Wisconsin.

³ See <https://wisconsindot.gov/Pages/dmv/vehicles/title-plates/persplat.aspx>

11. Defendant Craig Thompson is the Secretary of the Wisconsin Department of Transportation and is named in his official capacity only pursuant to *Ex Parte Young*, 209 U.S. 123 (1908). Secretary Thompson oversees the DOT's administration of the personalized registration plate program challenged in this action.

JURISDICTION AND VENUE

12. This case arises under the Constitution and laws of the United States, and subject matter jurisdiction is therefore proper under 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Fed. R. Civ. P. 57. It has authority to issue injunctive relief pursuant to 42 U.S.C. § 1983. It has authority to award attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

13. Plaintiffs are located and reside in Chippewa County, Wisconsin, and all events or omissions giving rise to this cause of action occurred in Chippewa County, Wisconsin, which is within the Western District of Wisconsin. Venue is therefore proper under 28 U.S.C. § 1391(b)(1) and (2).

STATEMENT OF FACTS

14. Personalized registration plates are a very common way for Wisconsinites to express themselves.

15. Plaintiff Nichols is a car collector and enthusiast who obtains personalized registration plates for each of his vehicles. He uses the plates to express

his personality, to express his views on the car's personality, or to make political statements, or all three of those things when possible.

16. In 2001, Plaintiff Nichols owned a Pontiac Firebird Trans Am WS6. He applied for and was issued personalized plates for that vehicle which read "RD RRAGE", which was a form of the phrase "road rage."

17. Plaintiff Nichols maintained that personalized registration plate for several years until he returned that car in 2003 as part of a manufacturer's buyback in response to a lemon law action.

18. A few years ago, Plaintiff Nichols purchased another 2001 Pontiac Firebird Trans Am WS6 and sought to put on this vehicle the same personalized registration plates that he was previously issued and previously displayed, "RD RRAGE."

19. Plaintiff Nichols filed an application, and was told that plate was not available, and so he instead obtained the plate "AGRESIV" for the car.

20. In December 2023, Plaintiff Nichols filed another application with the Wisconsin Department of Transportation for a personalized registration plate for his 2001 Pontiac Firebird Trans Am which read "RD RRAGE."

21. Later that month, DOT sent him a denial letter informing him that the plate was "not available."

22. Wisconsin State Law provides "[t]he department may refuse to issue any combination of letters or numbers, or both, which may carry connotations offensive to good taste or decency, or which would be misleading, or in conflict with the issuance

of any other registration plates. All decisions of the department with respect to personalized registration plate applications shall be final and not subject to judicial review under ch. 227.” Wis. Stat. § 341.145(7).

23. Pursuant to Wis. Stat. § 341.145(8), DOT may cancel and order the return of a previously issued personalized registration plate under essentially the same standard.⁴

24. In response to a public records request seeking a list of personalized plates that had been applied for, but which were denied, DOT provided Plaintiff Nichols with two documents: (1) a guidance document entitled “Criteria for Objectionable or Misleading Personalized Plates” and (2) a document which was a list of “objectionable” registration plates.

25. Plaintiff’s desired plate, “RD RRAGE” was included on the list of “objectionable” registration plates dated June 5, 2019, which would correspond to the time when Plaintiff had sought that plate and was denied the first time.

26. The “Criteria for Objectionable or Misleading Personalized Plates” document begins with the blanket statement that “Messages must not be offensive to good taste or decency” and then provides a list of “examples that do not meet the criteria.”

27. The “examples” provided in the “Criteria for Objectionable or Misleading Personalized Plates” guidance document include: (1) critical or derogatory messages

⁴ While Wis. Stat. § 341.145(7) uses the phrase “good taste or decency”, Wis. Stat. § 341.145(8) uses “good taste and decency.”

to the general public; (2) messages denoting violence directed toward someone or something; (3) sexual messages; (4) use of “Hate” or “H8” toward individuals and/or persons; (5) terms or names of subversive organizations; (6) gang related terms; (7) illegal drug terms; (8) identifying as a law enforcement official; (9) messages which are misleading, or which use similar letter combinations which are difficult to distinguish; and (10) messages which conflict with the issuance of other registration plates.

28. A copy of the “Criteria for Objectionable or Misleading Personalized Plates” document is attached hereto as Exhibit A.

29. “Examples” (8), (9) and (10) do not relate to determining if a desired plate is “offensive to good taste or decency” and instead focus on eliminating plates which are misleading or which conflict with other plates. Plaintiff does not challenge those aspects of the statutes.

30. A copy of the list of “objectionable” plates is attached hereto as Exhibit B.

31. There are no administrative rules which have been promulgated to govern the interpretation, administration or enforcement of Wis. Stat. §§ 341.145(7) and (8).

32. Staff directed by Defendant make determinations on whether a particular plate will be issued (or whether an already issued plate will be revoked) based solely upon the content of the registration plate and whether the staff member

believes that content may carry connotations offensive to good taste or decency under Wis. Stat. §§ 341.145(7) and (8).

CAUSE OF ACTION 42 U.S.C. § 1983

FACIAL VIOLATION OF THE FIRST AMENDMENT

33. Plaintiff incorporates the allegations in the preceding paragraphs.

34. The Civil Rights Act of 1871, later codified as 42 U.S.C. § 1983, provides that “every person, who under color of any statute . . . subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings.”

35. Personalized registration plates reflect the applicants’ personal expression. Thus, Wis. Stat. § 341.145(7)’s restrictions regarding issuing plates “which may carry connotations offensive to good taste or decency,” and § 341.145(8)’s restrictions allowing the rescinding of plates which “may carry connotations offensive to good taste and decency” both violate First Amendment Free Speech rights.

36. Both Wis. Stat. §§ 341.145(7) and (8) impose content-based restrictions on speech and are subject to strict scrutiny.

37. Neither Wis. Stat. § 341.145(7) nor Wis. Stat. § 341.145(8) are narrowly tailored to any compelling governmental interest.

38. Even if strict scrutiny did not apply, Wisconsin DOT’s personalized registration plate regulatory scheme is still invalid under the First Amendment.

39. DMV officials enforcing Wis. Stat. §§ 341.145(7) and (8) determine what they believe to be the meaning of various configurations for personalized registration plates.

40. DMV officials must make subjective and arbitrary decisions about which registration plates to issue and which to deny. As a result, the law allows DMV officials to discriminate based upon viewpoint.

41. The opportunity for viewpoint discrimination is evidenced by this case, where at one time, one DMV official determined Plaintiff Nichols could have the “RD RRAGE” plate, and then at a different time, a different DMV official determined he could not. The statutory criteria had not changed in any way over that time.

42. The statute is also facially overbroad.

43. As a result, this Court should declare both Wis. Stat. § 341.145(7)’s prohibition on issuance of registration plates “which may carry connotations offensive to good taste or decency” and Wis. Stat. § 341.145(8)’s provision allowing the rescinding of plates which “may carry connotations offensive to good taste and decency” to be facially unconstitutional in violation of the First Amendment and should further enjoin Defendant from taking any action to enforce those provisions.

REQUEST FOR RELIEF

Plaintiffs therefore request the following relief:

A. A declaration that Wis. Stat. § 341.145(7)’s prohibition on registration plates “which may carry connotations offensive to good taste or decency” and Wis. Stat. § 341.145(8)’s provision allowing the rescinding of registration plates which

“may carry connotations offensive to good taste and decency” are facially unconstitutional under the First Amendment;

B. An injunction preventing Defendant and his successors from taking any further action enforcing Wis. Stat. § 341.145(7)’s prohibition on registration plates “which may carry connotations offensive to good taste or decency” and Wis. Stat. § 341.145(8)’s provision allowing the rescinding of registration plates which “may carry connotations offensive to good taste and decency”;

C. Costs and reasonable attorneys’ fees under 42 U.S.C. § 1988; and

D. Any such other relief as the Court deems appropriate.

Dated: August 12, 2024

Respectfully Submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY

/s/ Lucas T. Vebber

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