

TESTIMONY OF ZACHARY L. HEIDEN

Ought Not To Pass - LD 130

An Act To Create Appropriate Standards for the Secretary of State To Follow When Approving the Assignments of Vanity Registration Plates

Ought Not To Pass - LD 200

An Act To Allow the Secretary of State To Refuse To Issue or To Recall a Vanity Registration Plate with Vulgar, Obscene, Contemptuous or Profane Language

Ought Not To Pass - LD 289

An Act To Authorize the Secretary of State To Reject Certain Vanity License Plate Requests

JOINT STANDING COMMITTEE ON TRANSPORTATION

May 4, 2021

Senator Diamond, Representative Martin, and Members of the Joint Standing Committee on Transportation, greetings. My name is Zachary Heiden, and I am chief counsel for the ACLU of Maine, a statewide organization committed to advancing and preserving civil liberties in Maine. On behalf our members, I urge you to oppose LD 130, LD 200, and LD 289 because government officials are not permitted to censor speech because they disagree with it.

Each of these bills embraces a slightly different mechanism to achieve the same goal: restoring the authority of the Maine Secretary of State to reject requests for vanity license plates because the message on the plate is judged to be obscene or offensive in some way, e.g. because it refers to particular parts of the human body, or because it uses a slang term for controlled substances. Approximately six years ago, the Maine legislature wisely removed the Secretary of State's power to engage in content-based censorship because such censorship would be unconstitutional. The Maine legislature should decline to authorize unconstitutional censorship.

Until very recently, Rhode Island had a statute that permitted its Department of Motor Vehicles to refuse to issue vanity license plates that were “offensive to good taste and decency.” Rhode Island General Law §31-3-17.1. Sean Carroll was issued a vanity plate that read “FKGAS,” and after a fellow motorist complained, the Rhode Island BMV sought to recall Mr. Carroll’s plate.

Mr. Carroll filed suit in United States District Court, which on October 2, 2020 granted him a preliminary injunction blocking enforcement of the law under the First Amendment. Relevant to this committee’s consideration of these bills, the Court found (consistent with decades of First Amendment jurisprudence) that laws disfavoring “ideas that offend” runs afoul of the Constitution’s prohibition on viewpoint-based discrimination. *See Carroll v. Craddock*, 494 F. Supp. 3d 158, 168 (D.R.I. 2020). Based on this, the Court enjoined the statute on its face—that is, in its application to everyone and not just to Mr. Carroll. *See id.* at 170. If Maine were to adopt any of these three proposed bills, it would likely face a similar challenge, and the courts in Maine would likely reach a similar result.

Some people, no doubt, find public references to penises, vaginas, breasts, buttocks, drugs, deities, sex acts, and combinations of the above to be offensive and inconsistent with the kind of state where they wish to live. We do not doubt the sincerity of their feelings on this matter. But, one thing that unites us as a state and as a nation—one of the few things—is our commitment to freedom of expression as a fundamental freedom that is, or ought to be, the birthright of every human being. You can reaffirm your commitment to that basic principle by voting that LDs 130, 200, and 289 “Ought Not To Pass.”

