

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION**

LYNDON HART,

Plaintiff,

vs.

MICHAEL HOUDYSHELL, in his individual and official capacity as Secretary of the South Dakota Department of Revenue; BRENDA KING, employee of the South Dakota Motor Vehicle Division, in her individual and official capacity,

Defendants

Case No.: 3:23-cv-3030

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF UNDER 42 U.S.C. § 1983
FOR VIOLATION OF THE FIRST
AND FOURTEENTH AMENDMENTS

INTRODUCTION

The South Dakota Department of Revenue has for over a decade chosen to knowingly violate the First Amendment rights of scores of South Dakotans like the Plaintiff Lyndon Hart (“Mr. Hart). In the summer of 2022, the Department denied Mr. Hart’s application for the personalized plate REZWEED for being in “poor taste” under S.D.C.L. § 32-5-89.2 which grants the Secretary of the Department of Revenue the authority to “refuse to issue any letter combination which carries connotations offensive to good taste and decency.” Despite the Department eventually reversing its decision, without explanation, and granting Mr. Hart the REZWEED plate, Mr. Hart’s free speech rights are still at risk of being trampled by

the Department of Revenue. This is because S.D.C.L. § 32-3-48 and the Department's written Policy #MV118 grant the Secretary of the Department of Revenue the authority to recall plates at any time that are believed to have been issued "in error" and the Department used this authority to recall at least three personalized plates for being offensive to good taste and decency in 2022 alone. Thus, Mr. Hart's REZWEED plate could be recalled on the whim of the Secretary at any time. Additionally, when he applies for a personalized plate for another vehicle he owns reflecting his desired message of REZBUD or REZSMOK, his application likely will once again be denied because the statute gives the Department the authority to do so. The Department, after all, previously denied Mr. Hart's requested REZWEED plate and has denied similar plates such as REZNDN, REZMADE, and REZZED.

The South Dakota Department of Revenue intentionally suppressed Mr. Hart's protected speech despite admitting to the South Dakota Legislature in 2008 that the use of S.D.C.L. § 32-5-89.2's "offensive to good taste and decency" standard to deny applications for personalized license plates was unconstitutional. The very same government agency that processed and denied Mr. Hart's application for a personalized license plate sought to repeal S.D.C.L. §§ 32-5-89.2 through 32-5-89.5 because they contain certain provisions that violate free speech rights.

In 2008, Debra Hillmer, then-Director of the Department of Revenue’s Motor Vehicle Division, testified before the State Legislature that S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard was unconstitutional and should be repealed. She explained to the legislature the Department of Revenue “started reviewing our process and the legal basis for approval or denial” of personalized plates and had determined that “we have little ground to stand on to deny plates.” She emphasized that if the Department continued to deny applications for personalized license plates that “it is not an issue of *if* we will be sued, it is only an issue of *when* we will be sued.”

Despite this compelling testimony, the Senate Transportation Committee chose to ignore that the law was violating the free speech rights of South Dakotans and did not repeal the law.

After the law was not repealed, the Department of Revenue continued to deny applications using an unconstitutional standard, knowing that every denial under that basis was a First Amendment violation. The Department further adopted Policy #MV118 in 2015 directing Department employees to enforce the “offensive to good taste and decency” standard when reviewing applications for personalized plates. Policy #MV118 also states the Department could recall previously issued plates if it determines at any time that a plate is “offensive to good taste and decency.”

A lifelong activist, Mr. Hart has supported causes that combat discrimination and he has advocated for issues that he believes in. In 1990, Mr. Hart traveled from Rapid City to Pierre, South Dakota in order to testify before the South Dakota legislature and to advocate for recognition of the Reverend Dr. Martin Luther King Junior’s birthday as an official holiday. He traveled through a blizzard to make it to the State Capital, and his impassioned testimony was influential in the state adopting not only Martin Luther King Day as an official holiday but also establishing the Nation’s first Native American Day. His efforts were memorialized in a front-page story in the *Argus Leader* titled “Modestly, Hart Changes History” and resulted in him receiving an award from the King Center in acknowledgement of his pivotal role in establishing the holiday in South Dakota.

In the decades since, Mr. Hart, who himself is Indigenous and Black, has advocated in favor of legislation making Tribal IDs a valid form of identification in the state; he has spoken at events around the country on issues of importance to Indigenous and Black people; and he has been inducted into the National Western Multicultural Museum Hall of Fame.¹ As a former service member in the U.S. Marine Corps, Mr. Hart believes in the rights granted to him under the United States

¹ <https://www.sdpb.org/blogs/history/lynn-smokey-hart-the-man-who-got-in-the-way/>.

Constitution, including those afforded to him as an enrolled Tribal Member of Yankton Sioux Tribe.

Mr. Hart’s business, Rez Weed Indeed, “support[s] and promote[s] the legal selling and use of Medical and Recreational Marijuana on all Federally recognized Indian reservations . . . in America” as a way of “respecting and honoring and supporting our Tribal Sovereignty lands.”² Since South Dakota’s personalized license plate laws create a platform for citizen’s free speech rights, Mr. Hart exercised that right accordingly. On May 31, 2022, he applied for a personalized license plate reading REZWEED to raise awareness of his business and its message of Tribal Sovereignty. Mr. Hart’s attempt to exercise his free speech rights on these issues was hindered when the Department of Revenue denied his application for the personalized plate REZWEED for being “in poor taste” under S.D.C.L. § 32-5-89.2.

Mr. Hart’s message is exactly the free speech that the First Amendment protects: “[T]he freedom to speak one’s mind is not only an aspect of individual liberty—and thus a good unto itself—but also is essential to the common quest for truth and the vitality of society as a whole.”³ Therefore, Mr. Hart is bringing this as-applied and facial constitutional challenge under 42 U.S.C. § 1983 to S.D.C.L. § 32-

² <https://rezweedindeed.com/>

³ Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 503-04 (1984).

5-89.2 and Policy #MV118 seeking prospective declaratory and injunctive relief to prevent the law and policy from being used to deny him a personalized license plate based on the “offensive to good taste and decency” standard, as well as nominal damages for the previous deprivation of his constitutional rights.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(3) and (4).

2. Plaintiff’s claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

3. Venue is appropriate under 28 U.S.C § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this judicial district and Defendants reside or are located in this judicial district.

4. Defendants’ constitutional violations are actionable pursuant to 42 U.S.C. § 1983.

PARTIES

5. Plaintiff Lyndon Hart is a citizen and resident of the State of South Dakota. He is a member of the Yankton Sioux Tribe and resides in Flandreau, Moody County, South Dakota. He is licensed to drive in South Dakota and owns at least one motor vehicle that is registered in the state.

6. The government officials entrusted to enforce S.D.C.L. § 32-5-89.2 and Policy #MV118 are Secretary Houdyshell, Brenda King and other employees of the Department of Revenue who process applications for personalized license plates.

7. Defendant Michael Houdyshell (“Houdyshell”) is the Cabinet Secretary of the South Dakota Department of Revenue.

8. S.D.C.L. § 32-5-89.2 grants Houdyshell the authority to “refuse to issue any letter combination” that would appear on a personalized license plate “which carries connotations offensive to good taste and decency.”

9. Houdyshell delegates, from time to time, his authority to other Department of Revenue employees who regularly process, approve, or deny personalized license plate applications.

10. Houdyshell decided to deny Plaintiff’s application for a personalized license plate for REZWEED using his authority granted under S.D.C.L. § 32-5-89.2 and under Policy #MV118. Houdyshell is sued in both his individual and official capacities.

11. Defendant Brenda King (“King”) is an employee for the South Dakota Department of Revenue’s Motor Vehicle Division.

12. King decided to deny Plaintiff’s application for a personalized license plate for not complying with S.D.C.L. § 32-5-89.2’s “offensive to good taste and

decency” standard and under the authority of Policy #MV118. King signed a letter to the Plaintiff informing him of this denial. King is sued in both her individual and official capacities.

13. At all relevant times, Defendants acted under color of state law within the meaning of 42 U.S.C. § 1983.

STATEMENT OF FACTS

I. South Dakota’s Personalized License Plate System.

14. The Department of Revenue “exercise[s] the powers, and ha[s] charge of and perform[s] functions, duties, and services with respect to the registration and licensing of motor vehicles[,]” in the state of South Dakota pursuant to S.D.C.L. § 32-1-3.

15. The South Dakota Motor Vehicle Division is a division of the Department of Revenue and performs some functions for the Department of Revenue related to personalized license plates.

16. A standard South Dakota automobile license plate consists of a combination of letters and numbers generated by the state’s Department of Revenue or its Motor Vehicle Division.

17. For an additional fee, vehicle owners are allowed to select their own letter and number combination to create a personalized license plate—sometimes referred to colloquially as a “vanity plate.”

18. Vehicle owners, like Mr. Hart, who apply for a personalized license plate, select a combination of letters and numbers that convey a message about anything they choose, which could reflect their personal identity, values, an idea, belief, or even their own sense of humor.

19. A personalized license plate contains a letter and number combination personally crafted by the applicant and intended to convey their particularized message affixed to the front and back bumper of their vehicle.

20. The public recognizes and perceives the letter and number combinations on personalized license plates as a message conveyed by the vehicle owner and not a message authored and endorsed by the state of South Dakota.

21. The issuance of personalized license plates is governed by S.D.C.L. §§ 32-5-89.2 through 32-5-89.5.

22. Attached as Exhibit 1 are the South Dakota Personalized License Plate Statutes S.D.C.L. §§ 32-5-89.2 through 32-5-89.5.

23. In its entirety, S.D.C.L. § 32-5-89.2 states:

Any owner of a motor vehicle, including a motorcycle, who is a resident of this state, and who has complied with all laws of this state in regards to the registration of a motor vehicle, may have the license plates replaced by special personalized license plates which shall conform in size and color combinations as may be provided by the secretary. No personalized license plate for a motor vehicle other than a motorcycle may contain more than

seven letters nor the single numeral one or two. No personalized license plate for a motorcycle may contain more than six letters nor the single numeral one or two. There may be no duplication of the personalized license plates issued by the secretary. *The secretary may refuse to issue any letter combination which carries connotations offensive to good taste and decency.* (emphasis added).

24. The phrase “the secretary” in S.D.C.L. § 32-5-89.2 refers to the Cabinet Secretary of the Department of Revenue, a position currently held by Defendant Houdyshell.

25. Various employees of the Department of Revenue Motor Vehicle Division are authorized to review applications for personalized license plates and approve or deny them.

26. S.D.C.L. § 32-5-89.2 contains several content-neutral limitations such as the number of characters allowed on a single plate and the requirement that no vehicle can have plates that duplicate plates already issued.

27. However, S.D.C.L. § 32-5-89.2 also contains a content-based and viewpoint-based restriction that grants Secretary Houdyshell the discretion to “refuse to issue any letter combination which carries connotations offensive to good taste and decency.”

28. The phrase “carries connotations offensive to good taste and decency” used in S.D.C.L. § 32-5-89.2 is not defined by statute.

29. S.D.C.L. § 32-3-48 authorizes Secretary Houdyshell to recall already issued personalized license plates under the “offensive to good taste and decency” standard. See, Exhibit 2—Copy of S.D.C.L. § 32-3-48.

30. S.D.C.L. § 32-3-48 contains no definitions for “offensive to good taste and decency.”

31. S.D.C.L. § 32-5-89.2 grants Defendant Houdyshell unfettered discretion to deny an application for carrying connotations “offensive to good taste and decency” at the time the application is submitted.

32. Furthermore, S.D.C.L. § 32-3-48 grants Defendant Houdyshell ongoing unfettered discretion to recall a previously issued plate for carrying connotations “offensive to good taste and decency” at any time the plate is in use.

33. Department of Revenue Policy #MV118 incorporates S.D.C.L. § 32-3-48’s authority for the Secretary of the Department of Revenue to recall personalized plates, at any time, that were previously approved.

34. Policy #MV118 allows the Department to recall previously approved personalized plates if they are later determined to carry connotations “offensive to good taste and decency.”

35. Due to the ambiguity and unfettered discretion in the personalized plate statute S.D.C.L. § 32-5-89.2, an applicant for a personalized license plate cannot

determine what the standard is and whether his requested message meets that standard.

36. Due to the ambiguity and unfettered discretion in the recall plate statute S.D.C.L. § 32-5-48, a personalized plate holder is at constant risk of having his speech censored at any time at the whim of the government due to the lack of any limitation on the time a plate may be recalled or not renewed.

37. The inherent ambiguity and unfettered discretion in S.D.C.L. § 32-5-89.2, S.D.C.L. § 32-3-48 and Policy #MV118 provide no certainty or clarity to personalized plate applicants and personalized plate holders of the type of speech or message permitted.

38. These statutes afford the state limitless authority both in the content and amount of time to censor free speech.

II. The Department of Revenue Admits S.D.C.L. § 32-5-89.2 Violates Free Speech Rights

39. In 2008, Senate Bill 20 (“the Bill”) entitled “An Act to repeal certain provisions regarding personalized motor vehicle license plates” was introduced in the South Dakota legislature.

40. The Bill sought to repeal S.D.C.L. §§ 32-5-89.2 through 32-5-89.5 because the Director of the Department of Revenue Division of Motor Vehicles believed S.D.C.L. § 32-5-89.2 violated citizen’s free speech rights.

41. The Bill was sponsored by the Committee on Transportation at the request of the Department of Revenue and on January 8, 2008, the Bill was first read in the Senate and was referred to the Senate Transportation Committee.

42. On January 15, 2008, the Senate Transportation Committee held a hearing on the bill where Debra Hillmer, then-Director of the Department of Revenue's Division of Motor Vehicles, testified:

Our statute says that the secretary may refuse to issue any letter combination which carries connotations offensive to good taste and decency. One thing I've learned over the years is that 'good taste and decency' is different depending on your perspective on issues and your moral upbringing.

* * *

When we were faced with this issue during the last year we started reviewing our process and the legal basis for approval or denial. It became evident that based upon the Eighth Circuit Court opinion, which we are bound by, we have little ground to stand on to deny plates.

43. During her testimony, Director Hillmer also distributed copies of the Eighth Circuit Court of Appeals case Lewis v. Wilson, 253 F.3d 1077 (8th Cir. 2001) to the members of the Senate Transportation Committee and stated:

The Court actually upheld, in essence, that once the State opens up the avenue for citizens to put personal messages on their plates then the free speech rule applies. You will see that this case revolved around the personalized license plate ARYAN1. Perhaps we should all find that offensive but the Court held that the State did not have the right to

cancel free speech and therefore could not deny the issuance of the plate. They also found in this particular case that because the plaintiff was prevailing, the state was liable for all attorney's fees as well. The amount of revenue that is collected from our personalized license plates, which amounts to about \$250K per year, is not even a drop in the bucket to what we would have to pay for defending any one of these cases.

* * *

Regardless of what the intent of the applicant is to put a message on a plate, the recipient, the reader of that may receive that because of their perspective in a totally different manner and it really puts the state in a position of having to decide what should or should not be on the plates and we do not think that is in the best interest of the state.

* * *

I firmly believe that the State should not be in a position where we have to monitor what meets the test for free speech and what does not.

44. Following Director Hillmer's testimony in favor of the Bill, Daniel C. Mosteller, then-Superintendent of the South Dakota Highway Patrol also testified in favor of the Bill.

45. Superintendent Mosteller stated:

From my perspective, the personalized plates for law enforcement serve little purpose.

* * *

Over the years, there have been a number of times where we've called Deb's office, troopers have called in and said

‘what on earth is this personalized plate being issued on a vehicle for?’ And when we go into what is on the plate and explain to them what is actually they are trying to say on the plate then the plate has been removed from the vehicle. So not only have there been instances in other states, there have a number of instances in this state as well where we’ve called in and *we’ve had to ask to have plates taken off the vehicle because of the obscene nature of what was printed on the plates* (emphasis added)

46. Director Hillmer also testified:

Once you open up the avenue for personalized license plates, you open it up for free speech. And once you do that then we cannot monitor what is basically—then we can’t deny those issues that do not meet that criteria. So free speech means I have the right to say on my plate, pretty much anything that I want to. And as I said, it’s not if we will be sued, it’s just a matter of when we will be sued. And are we willing to continue to put the state at risk in that particular situation. And I say we are not.

47. Members of the Committee questioned Director Hillmer about how much revenue the Department receives through the personalized plate program and whether it would make sense to increase the price of personalized plates in South Dakota.

48. Director Hillmer responded to one of these questions by stating:

I would argue that no dollar amount that you put on that fee will ever cover the cost that are probably associated with a lawsuit that we would have to defend in this state when we are sued because we would either deny to issue a plate or issue one that someone finds offensive.

* * *

I would go back to the same point that we can be sued no matter what criteria we have in law. If somebody thinks that free speech applies to them then they can take you to court on that particular issue. If you look at the [Lewis] case, then they actually had two different cases on that particular issue. First it was denied because it was offensive Regardless of what you put in the law for denying or approving those plates I think you run the risk and the question really has to come back to ‘Does the State want to assume that risk of defending those types of issues?’ And I think that’s what we come back to on this particular issue. And better guidelines, yes may be nice but I don’t think it removes the possibility of a lawsuit being filed against us.

49. The South Dakota legislature chose not to repeal the law.

50. S.D.C.L. § 32-5-89.2 continued in full force and effect without modification after the 2008 legislature did nothing to remedy the unconstitutional “offensive to good taste and decency” standard.

51. Upon information and belief, the statute continues to garner substantial state revenue of approximately \$250,000 annually or more.

52. The personalized plate statutes continue to censor speech by application of the “offensive to good taste and decency” standard found in S.D.C.L. § 32-5-89.2.

III. The Department of Revenue Enacts Policy #MV118 to Censor Free Speech More Than S.D.C.L. § 32-5-89.2.

53. Even after advising the legislature in 2008 that S.D.C.L. § 32-5-89.2 violated free speech rights, in 2015 the Department of Revenue enacted written Policy #MV118.

54. When enacted in 2015, Policy #MV118 stated in relevant part:

Personalized license plates cannot contain any of the following:

- No special characters (such as #, \$, &, @, etc.) may be used.
 - o \$D\$U#1
 - o FUN@MV
- No vulgar words, terms, or abbreviations may be used.
 - o The characters in the order used cannot express, represent, or imply a profane, obscene, or sexual meaning.
 - o Includes definitions in the dictionary or found through internet searches.
- No word or term that is offensive or disrespectful of a race, religion, color, deity, ethnic heritage, gender, sexual orientation, disability status, or political affiliation.
- No words or terms that support lawlessness, unlawful activities, or that relates to illegal drugs or paraphernalia.
- No foreign words or terms that fall into any of the above categories.
- No combination of letters and/or numbers that conflicts with or is a duplicate of another South Dakota license plate or plate series.
 - o Go to www.sdcs.org to “CK A PL8” to check the availability of specific plate options
- No combination of letters and/or numbers that could be misinterpreted or is confusing from a readability standpoint for law enforcement purposes.
 - o 88B88B

55. S.D.C.L. § 32-5-89.2 prohibits none of the characters, letters, categories, or words outlined above.

56. The 2015 version of Policy #MV118's stated purpose was "To clarify the approval process for personalized plates and the allowable messages."

57. That version of Policy #MV118 also stated, "The plate in question may be revoked if the Department finds that it does not meet the standards of good taste and decency."

58. Even though Policy #MV118 was revised in September 2023, it still contains provisions that censor free speech of South Dakotans.

59. The current version of Policy #MV118 reads in relevant part:

Personalized license plates may not contain any of the following:

- No special characters (such as #, \$, &, @, etc.) may be used.
 - o \$D\$U#1
 - o FUN@MV
- No combination of letters and/or numbers that conflict with or is a duplicate of another South Dakota license plate or plate series.
 - o Go to www.sdcar.org to "CK A PL8" to check the availability of specific plate options
- No combination of letters and/or numbers that could be misinterpreted or is confusing from a readability standpoint for law enforcement purposes.
 - o e.g.: 88B88B
- No combination of letters and/or numbers that mimic or pretend to represent any law enforcement agency or emergency service provider.
 - o e.g.: SDHP 1; FBI 2; RCPD 3
- No vulgar or swear words as defined in Merriam-Websters online dictionary as vulgar, profane, offensive, or having a sexual connotation.

* * *

The Department may refuse to issue, or recall previously issued, personalized license plates determined to be in violation of statute or this policy.... (emphasis added) See, Exhibit 3 attached – September 14, 2023 Policy #MV118.

60. Under the current version of Policy #MV118 if a personalized plate has been issued but determined at any later date by the Defendants or other Department of Revenue employees to carry connotations offensive to good taste and decency, it can be recalled.

IV. The Department of Revenue’s Process to Review Personalized Plate Applications Under Policy #MV118 and the Motor Vehicle Division Procedure Manual.

61. When Mr. Hart applied for the personalized plate REZWEED, the December 8, 2015 version of Policy #MV118 and the “Personalized License Plates” section of the Motor Vehicle Division’s Procedure Manual were in effect and were applied to him and other applicants up until September 14, 2023 when the policy was revised.

62. The current version of Policy #MV118 allows the Department to deny personalized plates if they are deemed “offensive to good taste and decency”.

63. The purpose of the current version of Policy #MV118 is “[t]o clarify the approval process for personalized plates” but it in no way changes or repeals any part of S.D.C.L. § 32-5-89.2.

64. The current version of Policy #MV118 states that the “Department may refuse to issue, or recall previously issued, personalized license plates determined to be in violation of statute or this policy.”

65. The Department’s right to refuse to issue or recall previously issued personalized license plates includes the right to do so if the plate is deemed to carry connotations “offensive to good taste as decency” at any time.

66. The Procedure Manual in effect when Mr. Hart applied, and upon information and belief, is still in effect currently, states that an “[a]pplicant shall state the meaning behind the requested personalized plate, on the application form.”

67. S.D.C.L. § 32-5-89.3 states that an “Application for special personalized license plates shall be made on forms prescribed by the secretary.”

68. The application form Mr. Hart completed and submitted states:

Personalized plate requests will be denied if they contain any of the following:

- Special characters such as (#, \$, &, @, etc.)
- Vulgar words, terms, or abbreviations, characters that express, represent, or imply a profane, obscene, or sexual meaning
- Words or terms that are offensive or disrespectful of a race, religion, color, deity, ethnic heritage, gender, sexual orientation, disability status or political affiliation
- Words or terms that support lawlessness, unlawful activities, or that relate to illegal drugs or paraphernalia
- Foreign words or terms that fall into any of the previous categories

- Combinations of letters and/or numbers that conflict with or are a duplicate of another South Dakota license plate or plate series
- Combinations of letters and/or numbers that could be misinterpreted or are confusing from a readability standpoint for law enforcement purposes.

69. The application Mr. Hart completed and submitted does not define any words or terms set forth in the preceding paragraph.

70. The application Mr. Hart completed and submitted also asks the applicant to “Please explain the meaning of the requested personalized plate. If your first choice is not available or denied, your second choice will be considered.”

71. The personalized license plate application Mr. Hart completed and submitted, Policy #MV118 dated December 8, 2015, and the relevant portion of the Procedure Manual all required him to state the meaning of his requested personalized plate.

72. However, S.D.C.L. §§ 32-5-89.2 through 32-5-89.5 do not require applicants to state the meaning of their requested personalized plate.

73. The requirement that an applicant state the meaning of their requested plate allows the Secretary of the Department of Revenue and/or Department employees to subjectively decide, based on their personal interpretation, whether the requested plate carries connotations “offensive to good taste and decency.”

74. The requirement that an applicant state “the meaning of the requested personalized plate” allows one or both Defendants or other Department employees to subjectively determine if the message carries connotations “offensive to good taste or decency” to approve or deny an application.

75. This requirement also allows one or both Defendants or other Department employees to decide, based on their own subjective viewpoint, whether to recall a requested plate for carrying connotations “offensive to good taste and decency” at any time after being issued.

V. The Department of Revenue’s Practice of Denying Personalized Plate Applications and Recalling Previously Issued Plates.

76. S.D.C.L. § 32-5-89.2 on its face is overbroad because it prohibits a substantial amount of protected speech relative to its plainly legitimate applications.

77. S.D.C.L. § 32-5-89.2 on its face is a content-based and viewpoint-based regulation because it grants the Department of Revenue Secretary unbridled discretion to engage in inconsistent and subjective determinations of which messages carry connotations “offensive to good taste and decency.”

78. S.D.C.L. § 32-5-89.2 on its face targets particular views taken by speakers on a subject by prohibiting messages that carry connotations “offensive to good taste and decency.”

79. Personalized plate messages, including REZWEED sought by the Plaintiff and plates sought by others, that are determined to carry “connotations offensive to good taste and decency”, are denied by Secretary Houdyshell and/or other employees within the Department of Revenue.

80. The Defendants’ and Department’s denial of personalized plate applications that carry “connotations offensive to good taste and decency,” under S.D.C.L. § 32-5-89.2 prohibits a substantial amount of protected speech relative to the statute’s legitimate applications.

81. The Defendants are authorized to exercise unbridled discretion under S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard.

82. This unbridled discretion has resulted in the Defendants and other Department of Revenue employees applying S.D.C.L. § 32-5-89.2 to personalized plate applications in an inconsistent, content-based, and viewpoint-based manner which is unconstitutional.

83. Plaintiff’s personalized plate application for REZWEED was denied as being in poor taste under S.D.C.L. § 32-5-89.2 by Secretary Houdyshell.

84. Plaintiff’s personalized plate application for REZWEED was also denied by Brenda King for being in poor taste under S.D.C.L. § 32-5-89.2.

85. Upon information and belief, Plaintiff's personalized plate application for REZWEED was further denied by other Department of Revenue employees for being in poor taste under S.D.C.L. § 32-5-89.2.

86. On or around September 28, 2022, the denial of Plaintiff's personalized plate application was reversed, and Plaintiff was notified by email that his application was approved without any further explanation.

87. Upon information and belief, another state employee had a different viewpoint about whether Mr. Hart's requested plate, REZWEED, was in "poor taste" and approved its issuance.

88. In the past, the Secretary of the Department of Revenue or other Department employees denied applications for plates reading HELLBOY, HELBOY, RZNHELL, RAZNHEL, and HELLHRS as being offensive to good taste and decency but approved HELLBNT, HELLBRD, and HELLCAT.

89. The Secretary of the Department of Revenue or other Department employees denied applications for plates for BEERUS, HLDMYBR, BYOB, BEER4ME, and BEERMOM for being offensive to good taste and decency but approved BEER30, BEERRUN, BEERBUS, and BEERMAN.

90. The Secretary of the Department of Revenue or other Department employees denied applications for plates for VETTKLR, HIPIKLR, OVERKIL,

and URKLNME for being offensive to good taste and decency but approved YOTEKLR, FISHKLR, and 1KLRTOY.

91. The Secretary of the Department of Revenue or other Department employees denied an application for plates for MAFIA for being offensive to good taste and decency but approved MOBBIN, GANGSTA, and GANGSTR.

92. The Secretary of the Department of Revenue or other Department employees denied applications for plates for 6IX9INE, 698, 69BUICK, and 69CADY for being offensive to good taste and decency but approved plates for 69, WET69 and 069GTX.

93. The Secretary of the Department of Revenue or other Department employees denied an application for the plate HLZ as offensive to good taste and decency but approved BLKHLZ.

94. The Secretary of the Department of Revenue or other Department employees denied an application for the plate CBD OIL as offensive to good taste and decency but approved CBD4ALL.

95. The Secretary of the Department of Revenue or other Department employees denied applications for plates for WHTWDOW as offensive to good taste and decency but approved BKWIDOW.

96. The Secretary of the Department of Revenue or other Department employees denied applications for plates for JRKFACE for being offensive to good taste and decency but approved JRKYBOY.

97. The Secretary of the Department of Revenue or other Department employees denied applications for WINE and CBDGRL as offensive to good taste and decency in the past but has since issued personalized license plates for WINE and CBDGRL.

98. The Secretary of the Department of Revenue or other Department employees regularly deny personalized license plate applications for being offensive to good taste and decency when no reasonable person could find them offensive to good taste and decency.

99. These denied applications include PBS, FRITOS, MIMSI, SIXFIVE, SFX, DRACO, WURST, HELMET, BELUSHI, MIYAGI1, and CAUSTIC.

100. S.D.C.L. § 32-5-89.2 facially authorizes the Secretary of the Department of Revenue to engage in viewpoint discrimination when issuing personalized plates.

101. The Secretary of the Department of Revenue or other employees has denied applications for plates for IH8UALL and IH8U for being offensive to good taste and decency but approved DNTH8 and DNTH8ME.

102. The Secretary of the Department of Revenue or other employees has denied applications for plates SATAN, S8N, SIX66, and DEV1L for being offensive to good taste and decency but approved 1GOD, 1TRUGOD, LIV4GOD, LUV4GOD, GODBLSS, JESUS, JESUS1, JESUS21, and JESUS4U.

103. Between June 2018 and July 2023, one or both Defendants or other South Dakota Department of Revenue employees, denied 2,135 personalized license plate applications for violating any provision of S.D.C.L. § 32-5-89.2 according to the open records request documents supplied by the Department of Revenue.

104. Six hundred seventy-three (673) of these denied applications were because one or both Defendants or other Department of Revenue employees determined that they carried “connotations offensive to good taste and decency” as prohibited by S.D.C.L. § 32-5-89.2.

105. Since September 2019, one or both Defendants or other Department of Revenue employees, have recalled at least 12 personalized plates that had previously been issued.

106. In 2022, one or both Defendants or other Department of Revenue employees recalled at least three previously approved plates for being in poor taste or carrying connotations “offensive to good taste and decency.”

107. The plates recalled in 2022 by one or both Defendants or other Department of Revenue employees for being in poor taste or otherwise carrying connotations offensive to good taste and decency included SPOOOK, SICA, and BIGSXY.

108. One or both Defendants or other Department of Revenue employees granted and did not recall personalized license plates for SPOOK57, SPOOK65, and SPOOKIE.

109. One or both Defendants or other Department of Revenue employees granted and did not recall personalized license plates for SXYHLBY, 2SXY4U, SEXY1, SEXY93, and SEXYRT.

110. One or both Defendants or other Department of Revenue employees recalled SICA for being in poor taste (presumably because it is a Spanish term for excrement) but granted and did not recall the personalized license plate GOTPOOP.

VI. The Department of Revenue’s Denial of Mr. Hart’s Application for REZWEED.

111. Mr. Hart owns a business called Rez Weed Indeed.

112. Rez Weed Indeed does not sell any marijuana products but instead “support[s] and promote[s] the legal selling and use of Medical and Recreational

Marijuana on all Federally recognized Indian reservations . . . in America” as a way of “respecting and honoring and supporting our Tribal Sovereignty lands.”

113. On May 31, 2022, Mr. Hart submitted an “Application for Personalized License Plate” to the Department of Revenue requesting the personalized license plate REZWEED.

114. On the application form, Mr. Hart indicated that the “meaning behind the requested personalized plates” is “WEED KILLER. HIS COMPANY IS CALLED REZ WEED INDEED,” because at the time he sought the plate, he was going to also operate the business to include lawn weed killing services, although he later changed his mind and did not add this service to the business.

115. REZWEED refers to Mr. Hart’s business Rez Weed Indeed and its mission of promoting Tribal Sovereignty.

116. On June 6, 2022, Brenda King, employee of the South Dakota Department of Revenue, signed a letter that was received by Mr. Hart denying his application for the personalized license plate REZWEED.

117. The letter stated, “Your request for Personalized license plate(s) REZWEED has been denied under statute 32-5-89.2 as it was found to be in poor taste.”

118. The letter did not inform Mr. Hart that he could appeal or otherwise contest the determination that the personalized plate he applied for was “in poor taste.”

119. Upon information and belief, Mr. Hart’s application was denied because it used the term REZ to refer to a reservation.

120. One or both Defendants or other Department of Revenue employees have previously denied plates using the term REZ including REZNDN, REZMADE, REZZED and, RAM1REZ.

121. However, at the time that Mr. Hart’s plate was denied, one or both Defendants or other Department of Revenue employees approved and issued similar plates which used the term REZ such as REZBOY, REZGIRL, REZJAMZ, REZTRK, and REZZY.

122. The Defendants and several other Department of Revenue employees reviewed Plaintiff’s personalized plate application for REZWEED and determined that it should be denied.

123. The Department of Revenue employees who reviewed Mr. Hart’s application for REZWEED are Thomas Allerdings, Motor Vehicle Supervisor; Nicole Brooks, Telephone Representative; Ashley Zilverberg, Motor Vehicle Deputy Director; Rosa Yaeger, Director Motor Vehicle Division; Michael

Houdyshell, Cabinet Secretary; and Brenda King, Motor Vehicle Division Information Section.

124. All six Department of Revenue employees denied Mr. Hart's plate application for REZWEED for being in "poor taste".

125. Following the denial of his application for a personalized plate reading REZWEED, the Moody County Treasurer's office was unable or unwilling to tell Mr. Hart why his REZWEED plate was believed to be in poor taste.

126. S.D.C.L. § 32-5-89.2 does not establish a procedure by which a denied application for a personalized license plate can be appealed or contested.

127. Policy #MV118 establishes a procedure to appeal or contest the recall of a previously issued personalized license.

128. On September 28, 2022, the Department of Revenue, Motor Vehicle Division reversed its previous denial of Mr. Hart's application for REZWEED without any explanation and approved it, which Mr. Hart intends to renew annually.

129. Despite having issued the REZWEED plate, the Department retains the authority to recall this plate under the "offensive to good taste and decency" standard at any time under S.D.C.L. § 32-3-48, S.D.C.L. § 32-5-89.2 and under Policy #MV118.

130. Because of the ongoing authority to recall the REZWEED plate and the fact that the Department of Revenue has consistently recalled previously approved personalized plates, the Department may recall Mr. Hart's REZWEED license plate at any time or choose not to renew it under the "offensive to good taste and decency" standard.

131. Mr. Hart has an additional vehicle and intends to apply for a personalized license plate reading REZBUD or REZSMOK.

132. Mr. Hart meets all the legal requirements to apply for a personalized license plate for his additional vehicle.

133. An application for the personalized license plate REZBUD or REZSMOK could be denied by the Defendants for allegedly being "in poor taste" or otherwise "offensive to good taste and decency" under S.D.C.L. § 32-5-89.2.

134. The Defendants and other Department of Revenue employees previously denied his application for REZWEED and have denied similar applications for personalized plates such as REZNDN, REZMADE, and REZZED because the statute provides them the discretion to do so.

135. Even if Mr. Hart's additional application is granted, the Defendants and other Department of Revenue employees have the authority to recall the issued plate under the "offensive to good taste and decency" standard at any time under S.D.C.L. § 32-3-48, S.D.C.L. § 32-5-89.2, and Policy #MV118.

136. Defendants and other Department of Revenue employees have regularly exercised that authority to recall previously approved personalized plates on 12 prior occasions since 2022.

137. Plaintiff's intended future personalized plate of REZBUD or REZSMOK, if granted, could also be recalled by the Defendants at any time under the "offensive to good taste and decency" standard because it is authorized under S.D.C.L. § 32-3-48, S.D.C.L. § 32-5-89.2 and Policy #MV118 and because they and other employees have recalled other personalized plates under the same statutes after they were issued.

138. Mr. Hart's free speech activities have been chilled and suppressed by the actions of the Defendants.

139. Mr. Hart intends to engage in the constitutionally protected conduct of expressing his belief that Tribes and their members, including himself, should be allowed to exercise their free speech rights protected by the First Amendment and to express approval of Tribal Sovereignty via a personalized license plate.

140. By engaging in such conduct, however, Mr. Hart will be subjected to the content-based and viewpoint-based regulation found in S.D.C.L. § 32-5-89.2 and Policy #MV118 which is enforced by the Defendants.

141. Recalling or denying personalized plates at any time under Policy #MV118 and S.D.C.L. § 32-5-89.2 for carrying connotations "offensive to good

taste and decency” prohibits a substantial amount of protected speech relative to the legitimate application of the policy and statute.

CLAIMS FOR RELIEF

I. COUNT ONE—FIRST AMENDMENT FACIAL CHALLENGE— CONTENT AND VIEWPOINT DISCRIMINATION—42 U.S.C. § 1983

142. Plaintiff restates all prior paragraphs and allegations as if set forth fully herein.

143. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech and expression. The First Amendment is incorporated against the States by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

144. On its face, S.D.C.L. § 32-5-89.2 unlawfully restricts the speech of those applying for personalized license plates because the “offensive to good taste and decency” standard is a content-based and viewpoint-based restriction.

145. Defendants knew or should have known their enforcement of S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard to recall previously issued personalized plates and approve or deny personalized plates, including the Plaintiff’s, is content-based and viewpoint-based discriminatory.

II. COUNT TWO—FOURTEENTH AMENDMENT FACIAL CHALLENGE—VOID FOR VAGUENESS—42 U.S.C. § 1983

146. Plaintiff restates all prior paragraphs and allegations as if set forth fully herein.

147. The Fourteenth Amendment to the United States prohibits the deprivation of due process of law. Persons violating the Fourteenth Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

148. S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard and Policy #MV118 deny fair notice of the standard of conduct for which personalized plate applicants are to be held accountable, or grants an unrestricted delegation of power to the Defendants, which leaves the definition of its terms to the Defendants.

149. S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” provision and Policy #MV118 lack clear standards and objective definitions to prevent arbitrary and discriminatory application by Defendants and other Department of Revenue employees.

150. The vague nature of the statute and policy can be seen by the Defendants’ denial of applications for personalized plates for allegedly being in “poor taste” for benign messages such as MIMSI, SIXFIVE, SFX, DRACO, WURST, HELMET, BELUSHI, MIYAGI1, and CAUSTIC and recalling plates SPOOOK, SICA, and BIGSXY.

151. S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard lacks susceptibility to an objective definition.

152. This leaves Plaintiff and others unable to determine what standard is applicable to their personalized plate message.

153. Plaintiff and all South Dakotans will sustain harm and damages through their enforcement of S.D.C.L. § 32-5-89.2’s vague “offensive to good taste and decency” standard and enforcement of Policy #MV118 to recall plates at any time.

**III. COUNT THREE—FIRST AMENDMENT FACIAL
CHALLENGE—OVERBREADTH DOCTRINE—42 U.S.C. § 1983**

154. Plaintiff restates all prior paragraphs and allegations as if set forth fully herein.

155. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech and expression. The First Amendment is incorporated against the States by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

156. On its face S.D.C.L. § 32-5-89.2 and Policy #MV118 are overbroad because a substantial amount of protected speech is prohibited relative to their legitimate applications.

157. On its face, neither S.D.C.L. § 32-5-89.2 nor Policy #MV118 define the terms “carrying connotations offensive to good taste and decency” which is used to approve, deny or recall personalized plates.

158. Defendants consistently denied or recalled previously issued personalized license plates under S.D.C.L. § 32-3-48 and Policy #MV118 by applying S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard.

159. S.D.C.L. § 32-5-89.2 on its face so lacks standards for application that it delegates unbridled discretion to the government officials entrusted to enforce the regulation thereby suppressing free speech.

**IV. COUNT FOUR—FIRST AMENDMENT CONTENT AND
VIEWPOINT DISCRIMINATION AS-APPLIED CHALLENGE—42
U.S.C. § 1983**

160. Plaintiff restates all prior paragraphs and allegations as if set forth fully herein.

161. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech and expression. The First Amendment is incorporated against the States by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

162. Defendants impermissibly infringed upon the Plaintiff’s protected speech when they denied his personalized license plate application for

REZWEED as being in “poor taste” by enforcing both S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard and Policy #MV118 against Plaintiff.

163. Defendants’ enforcement of both S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard and Policy #MV118 against Plaintiff arbitrarily discriminated against him using content-based and viewpoint-based criteria when they unreasonably denied Plaintiff’s chosen plate REZWEED as being in “poor taste”.

164. Defendants knew or should have known their enforcement of S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard to deny Plaintiff’s application for REZWEED violated his clearly established constitutional rights, was content-based and viewpoint-based discriminatory and was unreasonable.

165. Moreover, Defendant’s actions were a flagrant suppression of the Plaintiff’s protected speech under the First Amendment to the United States Constitution.

166. Policy #MV118, which allows the Defendants to recall Plaintiff’s REZWEED plate, and any other personalized plate at any time after it is issued, impermissibly discriminates against the Plaintiff based on content and viewpoint.

167. Policy #MV118, which allows the Defendants to recall any personalized plate, chills and suppresses Plaintiff’s protected speech, thereby

depriving him of rights secured by the First Amendment to the United States Constitution.

168. Defendants have the capability to deny the Plaintiff's future personalized plate applications REZBUD or REZSMOK under S.D.C.L. § 32-5-89.2's "offensive to good taste and decency" standard and under Policy #MV118, both of which allow content-based and viewpoint-based discrimination.

169. Because Defendants can deny future plates under S.D.C.L. § 32-5-89.2's "offensive to good taste and decency" standard and Policy #MV118, it has a chilling effect on and suppresses the Plaintiff's protected speech in further violation of Plaintiff's constitutional rights.

170. Plaintiff has sustained harm and damages for the past denial of his plate for REZWEED by the Defendants and other Department employees and will continue to sustain harm and damages in the future.

V. COUNT FIVE—FOURTEENTH AMENDMENT VOID FOR VAGUENESS AS-APPLIED CHALLENGE—42 U.S.C. § 1983

171. Plaintiff restates all prior paragraphs and allegations as if set forth fully herein.

172. The Fourteenth Amendment to the United States prohibits the deprivation of due process of law. Persons violating the Fourteenth Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

173. S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard fails to inform Plaintiff or other persons of ordinary intelligence objectively what letter and/or number combination is “offensive to good taste and decency” under the statute because the standard is incapable of an objective definition.

174. Defendants knew or should have known their enforcement of S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard is vague, and their denial of the Plaintiff’s application for REZWEED violated the Plaintiff’s clearly established constitutional rights.

175. Plaintiff’s application for a plate reading REZWEED could not be interpreted objectively as “offensive to good taste and decency” under S.D.C.L. § 32-5-89.2 or Policy #MV118 because this standard is vague and undefined.

176. Defendants’ authority to recall Plaintiff’s plate REZWEED under the “offensive to good taste and decency” standard and Policy #MV118 cannot be exercised objectively due to the vagueness of the standard.

177. Plaintiff is unable to determine whether his intended application for a plate reading REZBUD or REZSMOK will meet the “offensive to good taste and decency” standard under S.D.C.L. § 32-5-89.2 because this standard is vague and undefined.

178. As a result of both the unconstitutionally vague nature of S.D.C.L. § 32-5-89.2’s “offensive to good taste and decency” standard, and the lack of clear

and objective definitions, Defendants have enforced this law arbitrarily and unreasonably against Plaintiff and others based on ambiguous, subjective, or discriminatory reasons.

179. As a result of Defendants' enforcement of the "offensive to good taste and decency standard," Plaintiff sustained damages when he was denied a plate for REZWEED for several months.

180. Because Defendants can enforce the "offensive to good taste and decency" standard under § 32-5-89.2 in the future against Plaintiff's desired plate REZBUD or REZSMOK, it suppresses protected speech.

181. Because Defendants have the capability to recall the Plaintiff's REZWEED plate at any time for being "offensive to good taste and decency" under Policy #MV118, Plaintiff's First Amendment rights are imminently at risk of being violated.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Pursuant to 28 U.S.C. §§ 2201 and 2202, declare that S.D.C.L. § 32-5-89.2's "offensive to good taste and decency" standard is unconstitutional on its face and as applied to Plaintiff;

- B. Pursuant to 28 U.S.C. §§ 2201 and 2202, declare that Policy #MV118 is unconstitutional on its face and as applied to Plaintiff;
- C. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, preliminarily and permanently enjoin Defendants and all persons acting in concert with them from enforcing the “offensive to good taste and decency” standard in S.D.C.L. § 32-5-89.2 against Plaintiff and others;
- D. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, preliminarily and permanently enjoin Defendants and all other persons acting in concert with them from exercising their authority under S.D.C.L. § 32-3-48 and/or Policy #MV118 to recall Plaintiff’s personalized license plate REZWEED;
- E. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, preliminary and permanently enjoin Defendants and all other persons acting in concert with them from exercising their authority under S.D.C.L. § 32-3-48 and/or Policy #MV118 to recall any personalized license plates for being “offensive to good taste and decency”;
- F. Award Plaintiff compensatory and/or nominal damages for Defendants’ violation of his constitutional rights;
- G. Award to Plaintiff his costs and reasonable attorneys’ fees in this action;
and
- H. Grant such other and further relief as to the Court appears just and proper.

Dated this 3rd day of November 2023.

American Civil Liberties Union of
South Dakota

/s/ Stephanie R. Amiotte

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Lyndon Hart
(b) County of Residence of First Listed Plaintiff Moody County, SD
(c) Attorneys (Firm Name, Address, and Telephone Number) See attachment

DEFENDANTS
S.D. Dept of Revenue Secretary Michael Houdyshell and S.D. Division of Motor Vehicles employee Brenda King
County of Residence of First Listed Defendant Hughes County, SD
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) See attachment

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983
Brief description of cause: First Amendment free speech violation and Fourteenth Amendment due process violation

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Nominal damages
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE 11.3.2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Stephanie R. Amiotte

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Cover Sheet
1(c) continued:

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