

BEFORE THE IDAHO TRANSPORTATION DEPARTMENT

LEVI HAWLEY,)	
)	OAH Case No. 25-290-31
Petitioner,)	
v.)	<u>AMENDED FINDINGS OF FACT,</u>
)	CONCLUSIONS OF LAW, AND
IDAHO TRANSPORTATION)	PRELIMINARY ORDER
DEPARTMENT,)	
)	
Respondent.)	
_____)	

This matter was assigned to Administrative Law Judge (ALJ) Merritt Dublin as the Hearing Officer on April 18, 2025. A remote hearing was held on April 24, 2025. Petitioner appeared. No representative appeared for the Idaho Department of Transportation (ITD). Based upon the administrative record provided by the ITD and Petitioner's testimony, the Hearing Officer issued Findings of Fact, Conclusions of Law, and Preliminary Order on April 29, 2025.

ITD filed a Petition for Reconsideration on May 6, 2025, with additional evidence in support of the motion. On May 7, 2025, the ALJ granted ITD's request for reconsideration, set aside its original Findings of Fact, Conclusions of Law, and Preliminary Hearing, and set the matter for re-hearing on May 15, 2025.

The hearing was held on May 15, 2025. Brian Goeke, ITD's Vehicle Services Manager, and Deputy Attorney General Brian Neuffer appeared on behalf of ITD. Mr. Hawley appeared on his own behalf. Both Mr. Goeke and Mr. Hawley provided testimony under oath. No additional exhibits were submitted.

Based on the complete administrative record, and evidence provided in testimony during both hearings, the Hearing Officer makes the following Amended Findings of Act and Conclusions of Law pursuant to Idaho Code section §49-326(4) and IDAPA 62.01.01.252.01.d.

FINDINGS OF FACT

1. On November 13, 2024, Petitioner registered a vehicle and applied for a personal license plate number: “MAGA AF.” In his application, he stated that the letters stand for “Make America Great Again America First.” (Hearing Recordings 4/24/25 & 5/15/25; Admin. Record.) Petitioner was issued the plate with the requested personalization.

2. On November 22, 2024, ITD issued a License Plate Cancellation Notification (“Notice”). The Notice informed Mr. Hawley that “during a recent audit of personalized license plates issued to Idaho vehicles, your personalized plate MAGA AF was flagged as having a double meaning which the state considers inappropriate for display on an officially issued license plate.” (Admin. Record, Notice.)

3. The Notice does not explain what other meaning his license plate was found to have that ITD considered inappropriate or what law or rule ITD was relying upon in cancelling the plate.

4. Mr. Geoke explained that ITD cancelled the plate because ITD’s internet search for the meaning of “AF” revealed that the most prevalent meaning is “as fuck” which is a term ITD considers prohibited as profanity under IDAPA 39.02.60.202.08. (May 15, 2025 Hearing Recording.) He testified that his team focuses on applying the regulation and ensuring that no license plates violate the rule, and that all of his team members understood the plate to mean “MAGA as fuck.”

5. Mr. Geoke testified that ITD considers the context of initials to determine if they fall under prohibited content under IDAPA 39.02.60.202.08, and he or a member of his team researched the term on the internet. ITD submitted a document titled “AF snippets” with the following definitions obtained from on-line sources:

///

Abbreviation for

Slang. As fuck; to a great degree (a euphemistic initialism used as a general intensifier, without explicit vulgarity): He's annoying af. 3 days ago

Dictionary.com

What does AF mean in slang?

Written abbreviation for as fuck: used, for example on social media and in text messages, for emphasizing something: He can be dumb AF sometimes. They're rich af. Fewer examples.

Cambridge Dictionary-Cambridge University Press

6. Mr. Hawley agrees that “as fuck” is “all over” the internet as the meaning of “AF” which he learned from his own internet research. He maintains that he intended “AF” to mean “America First.” He was not aware of another meaning of “AF” until he became aware of his plate cancellation and spoke to an ITD representative. Mr. Hawley also testified that “four out of five” ITD employees with whom he spoke said they did not see any problem with his plate.

7. Mr. Goeke testified that ITD does not take issue with the term “MAGA” and there is no evidence in the record that “MAGA AF” searches produced evidence of the meaning of both “MAGA” and “AF” together.

8. Based on the common definition of the meaning of “AF”, the record supports that in read together, the plate is commonly understood to mean “MAGA as fuck.” The Administrative Law Judge finds that the Department has demonstrated that the proposed license plate message (“MAGA AF”) displays a readily-known term considered to consist of profanity.

CONCLUSIONS OF LAW

1. Idaho Code section 49-409(1) allows Idahoans to apply for personalized license plates for their vehicles – with some exceptions and some statutory limitations (e.g., not exceeding

seven characters, no more than one plate with the same combination of letters and numbers). It also authorizes the Director to prescribe the form for application, and “at his discretion,” refuse to issue plates for a vehicle. I.C. § 49-409(1).

2. IDAPA 39.02.60.202.08 sets criteria for the ITD to determine the acceptability of a plate’s message. The regulation states in part:

Acceptability of the personalized license plate message and issuance, denial or cancellation will be determined by the Department based on the following criteria:

...

b. The message, in any language, may not carry a sexual connotation nor consist of a term that is considered to be one of obscenity, contempt, prejudice, hostility, insult, racial or ethnic degradation, ***or profanity, as defined by common internet and dictionary resources.***

(emphasis added).

3. IDAPA 39.02.60.202.08 additionally provides, with respect to personalized plates, the following considerations in the evaluation of personalized plates:

c. The criteria in Paragraph 202.08.b. of this rule is not to be considered an exhaustive list. A compilation of words, terms or letter/number combinations gathered from the experience of Idaho and other states may also be used as a guide. The Department may also rely on information obtained from law enforcement agencies within or outside of Idaho.

d. When a complaint is received from the public concerning an issued plate, the name of the complainant will not be recorded nor, if known, revealed.

e. Final determination regarding applications for questionable messages or cancellation of issued plates will be made by the Division of Motor Vehicles. The determination process will include a first review by technical staff, followed by a second review by supervisory and management staff. An applicant does, however, have a right to a hearing on the decision.

4. Petitioner bears the burden to prove that ITD’s cancellation of his plates is improper, and by a preponderance of the evidence. IDAPA 62.01.01.477.

5. In support of his appeal, Petitioner argues that (1) there are many license plates that are allowed that he finds offensive, but he believes that people should have the right to express themselves, (2) that making two letters that may or may not have a particular meaning offensive or profane to some people constitutes government overregulation, and (3) the meaning of his plate is not profane.

6. Mr. Hawley's arguments raise First Amendment questions in the context of government issued license plates. The Idaho courts have not addressed this issue, but other courts have.

a. As the U.S. Supreme Court has explained, for example, specialty license plates (as opposed to personalized 'vanity' plates) are not subject to traditional First Amendment analysis because the plates themselves express the *government's* own speech. *See generally Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 216-217, 135 S. Ct. 2239, 2251-52, 192 L. Ed. 2d 274 (2015) ("Texas's specialty license plate designs are meant to convey and have the effect of conveying a government message. They constitute government speech. The fact that private parties take part in the design and propagation of a message does not extinguish the governmental nature of the message or transform the government's role into that of a mere forum-provider. ... [T]he fact that Texas vehicle owners pay annual fees in order to display specialty license plates does not imply that the plate designs are merely a forum for private speech.") (cleaned up).

b. However, personalized 'vanity' plates differ from specialty plates, in that the messages are generally selected by the plate-holder, rather than messaging that has typically been designed by the government and presented for general circulation. *See generally, e.g., Hart v. Thomas*, 422 F. Supp. 3d 1227, 1232 (E.D. Ky. 2019) ("First, the

Court disagrees that license plate *numbers*, separate and distinct from license plate *designs*, have historically been used to communicate messages from the State. License plate designs have historically used slogans to urge action, promote tourism, and tout local industries. But vanity plates convey a personalized message with intrinsic meaning (sometimes clear, sometimes abstruse) that is independent of mere identification and specific to the owner.”)(cleaned up)(emphases in original); *accord generally, Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. at 212–13 (“Indeed, a person who displays a message on a Texas license plate likely intends to convey to the public that the State has endorsed that message. If not, the individual could simply display the message in question in larger letters on a bumper sticker right next to the plate. But the individual prefers a license plate design to the purely private speech expressed through bumper stickers. That may well be because Texas’s license plate designs convey government agreement with the message displayed.”) As a result, it is generally understood that personalized ‘vanity’ plates express the message of the individual car owner, rather than the state, especially given that personalized license plate messaging, when taken as a whole, can appear to be ‘incoherent babbling’ and/or the presenting of conflicting messages. *See generally Hart v. Thomas*, 422 F. Supp. 3d at 1232-33.

c. For these reasons, personalized ‘license’ plates are generally deemed to be nonpublic forums for which *some* limited expression is permitted, and the Hearing Officer so concludes here as well with respect to Idaho’s personalized license plate program. *See Hart v. Thomas*, 422 F. Supp. 3d at 1233 (“A license plate is government property upon which Kentucky has allowed some limited private expression in the form of vanity plates. Therefore, this Court finds that license plates, when made available for private expression,

are a nonpublic forum.”); *Odquina v. City & Cnty. of Honolulu*, No. 22-16844, 2023 WL 4234232, at *1 (9th Cir. June 28, 2023)(“We assume without deciding that license plates bearing customized alphanumeric inscriptions—commonly known as vanity plates—fall outside the government-speech doctrine as explained in *Walker v. Texas Division, Sons of Confederate Veterans*, 576 U.S. 200 (2015), and are properly analyzed as nonpublic forums.”); *Mitchell v. Maryland Motor Vehicle Admin.*, 450 Md. 282, 305, 148 A.3d 319, 333 (2016), *as corrected on reconsideration* (Dec. 6, 2016) (“...Maryland's vanity plates constitute a nonpublic forum.”);

d. “The government may restrict speech in nonpublic forums so long as such restrictions are reasonable in light of the forum's purpose and are viewpoint neutral.” *Odquina v. City & Cnty. of Honolulu*, No. 22-16844, 2023 WL 4234232, at *1 (9th Cir. June 28, 2023). In the context of personalized ‘vanity’ plates, the Court of Appeals of Maryland has explained:

The prohibition of “profanities, epithets, or obscenities” on vanity plates relates reasonably to Maryland's purposes of vehicle identification and revenue generation, which involve the public display of license plates. Because the State requires motorists to display license plates on their vehicles, the public is exposed to the messages that appear on vanity plates. For better or worse, our society sets apart particular words as out-of-bounds; their utterance or display can be understood reasonably as indecent or offensive, especially in the presence of minors. “Shit” is one of these words, and that is an English translation, admitted by Mitchell, of “mierda.” It is reasonable, therefore, for the State to protect knowledgeable observers of vanity plates from the perception of such a term. Even though a witness to a vanity plate message will discern easily the vehicle owner as the speaker, because the speech takes place on government property and only with State permission, the message will be associated with the State. “The state has a legitimate interest in not communicating the message that it approves of the public display of offensive scatological terms on state license plates,” and it is reasonable, therefore, for Maryland to prohibit “profanities, epithets, or obscenities,” content with which it does not wish to associate.

Neither the MVA's content-restricting regulation, nor its actions in accordance with that regulation, constitute viewpoint discrimination. Viewpoint discrimination occurs when the government “targets ... particular views taken by speakers on a subject,” for example, “to discourage one viewpoint and advance another.” Here, the Maryland regulation targets only content—profanities, epithets, and obscenities—not a speaker's viewpoint about such terms or any viewpoint expressed with such terms. Clearly, the regulation does not target viewpoints in support of organic agriculture. If Maryland wished to suppress pro-agriculture speech, it probably would not speak in favor of agriculture via commemorative plates, and it would restrict the use on vanity plates of terms such as “FARM,” “COMPOST,” and “CROPS.” This is not the case. Moreover, Maryland did not “impute an offensive intent” on the part of Mitchell, as he claims. Mitchell's subjective intent is irrelevant because the regulation restricts outright and objectively profanities, not specific viewpoints for or against profanity. The MVA rescinded Mitchell's plates not because of Mitchell's real or presumed intent, but based on the content with which Maryland is not willing to be associated, and the content the State is not willing to inflict upon the discerning public.

Mitchell v. Maryland Motor Vehicle Admin., 450 Md. at 311–12 (cleaned up).

7. In Idaho, ITD – and the Legislature, through its approval of ITD's rules, as contained in the IDAPA – has indicated that it is not willing to be associated with personalized ‘plate’ messages that reflect profanity. IDAPA 39.02.60.202.08.b. Accordingly, for these reasons as discussed in other persuasive authority, ITD's stated limitations on personalized ‘vanity’ plate messaging are reasonable and are viewpoint neutral, especially in the absence of any authority to the contrary with respect to Idaho's program.

8. Turning, then, to the application of ITD's rules to the proposed personalized plate message at issue – “MAGA AF” – the authority cited above, and the evidence presented in this matter, makes clear that the denial of Mr. Hawley's requested plate does not constitute viewpoint discrimination. “Viewpoint discrimination occurs when the government targets particular views taken by speakers on a subject, for example, to discourage one viewpoint and advance another.”

Mitchell v. Maryland Motor Vehicle Admin., 450 Md. at 312 (cleaned up). The regulation at issue

itself does not discriminate on particular views taken by ‘speakers’ of personalized license plates – instead, ITD simply precludes any messaging including profanity.

9. Mr. Hawley’s contention that his plate “MAGA AF” has a non-profane meaning, Make America Great Again America First, does not alter the fact that the plate message has “a double meaning which the state considers inappropriate for display on an officially issued license plate.” Admin. Rec., Notice. Mr. Hawley in fact acknowledges that “as fuck” was revealed as a highly prevalent meaning of “AF” in his own internet searches, and thus consist of profanity from a “common internet and dictionary resource.” IDAPA 39.02.60.202.08.b. Thus, the uncontroverted evidence in this matter demonstrates that – even accepting Mr. Hawley’s explanation as credible and plausible – the plate expresses a message readily susceptible to a double meaning, allowing for ITD’s rejection of that plate message as contrary to its regulations.

PRELIMINARY ORDER

Based on the Findings of Fact and the Conclusions of Law, the Hearing Officer **affirms** ITD’s License Plate Cancellation Notification dated November 22, 2024.

RULE 626 NOTICE

This is a preliminary order of the presiding officer. It can and will become final without further action of the agency, and without any further notice to you, unless any party requests that either the presiding officer or the agency head review it. If no such request is made within fourteen (14) days of the service of this preliminary order, the order will become final, and you will then have twenty-eight (28) days to file a petition for judicial review with a district court, pursuant to Idaho Code sections 67-5270 through 67-5279.

If you disagree with this preliminary order, you may file a “motion for reconsideration” with the presiding officer, or you may file “exceptions” and/or a “petition for review” with the

agency head. You are allowed to file all of these.

If you would like to file a motion for reconsideration of this preliminary order with the presiding officer, you must do so within fourteen (14) days of the service date of this order. After the presiding officer receives your motion for reconsideration, they have twenty-one (21) days to rule upon it. If they do not issue a ruling within twenty-one (21) days, your motion will be considered denied.

If another party has filed a motion for reconsideration of this preliminary order, you must file any opposition brief within fourteen (14) days from the service date of the motion for reconsideration. No further briefing by any party will be permitted unless the presiding officer, in their discretion, requests it.

You may also file any exceptions you may have to this preliminary order, with a supporting brief, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline.

If another party has filed exceptions to this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the exceptions. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it.

You may also file a petition for review regarding this preliminary order, with a supporting brief which sets forth the basis for review, directly with the agency head within fourteen (14) days of the service date of this order, unless the agency head sets a different deadline. The agency head may also notify the parties within fourteen (14) days of the service date of this order that they, by their own choice, are reviewing this preliminary order, which notice will identify the issues the agency head will review. If a motion for reconsideration has been filed with the presiding officer,

your petition for review, or the agency head's notice, does not have to be filed until fourteen (14) days after the motion for reconsideration process with the presiding officer is complete.

If another party has filed a petition for review of this preliminary order with the agency head, you must file any opposition brief within fourteen (14) days from the service date of the petition for review. No further briefing by any party will be permitted unless the agency head, in their discretion, requests it.

If you would like to request oral argument regarding any motion for reconsideration, exceptions, or petition for review, you must state so in your filings. The decision whether to have oral argument is a decision for the presiding officer or the agency head to make, and they may decide to not have oral argument, even if you or any other party has requested it.

If an agency head reviews a preliminary order, they have the option of either issuing a final order, remanding the matter back to the presiding officer, or holding additional hearings. You will be notified of the agency head's choice if the preliminary order is reviewed.

IT IS SO ORDERED.

DATED: May 16, 2025.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Merritt Dublin

Merritt Dublin
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2025, I caused to be served a true and correct copy of the foregoing by the following method to:

Levi Hawley
17720 N. Harpster Way
Nampa, ID 83687-5597
(208) 789-4578
Petitioner

☐ U.S. Mail
☒ Email:
Levi.HonorAutomotive@gmail.com

Brian Neuffer
Deputy Attorney General
Office of Attorney General
*Counsel for Idaho Department of
Transportation*

☐ U.S. Mail
☒ Email
Brian.Neuffer@itd.idaho.gov

Krisna Kiger
Idaho Department of Transportation
ITD Service Contacts

☐ U.S. Mail
☒ Email:
Krisna.Kiger@itd.idaho.gov
Brian.Goeke@itd.idaho.gov

OAH
General Government Division
P.O. Box 83720
Boise, ID 83720-0104

☒ Email:
filings@oah.idaho.gov
merritt.dublin@oah.idaho.gov

/s/ Elaine Maneck

Elaine Maneck, Deputy Clerk
Office of Administrative Hearings