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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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9  
10 THE WOMEN'S RESOURCE NETWORK, )  
DANA SERRANO, and KENT PETERS, )

11 Plaintiffs, )

12 v. )

NO. CV S-03-0786 GEB PAN

13 STEVEN GOURLEY, in his )  
capacity as DIRECTOR of the )  
14 DEPARTMENT OF MOTOR VEHICLES, )

PERMANENT INJUNCTION

15 Defendant. )

16  
17 YOSEMITE FOUNDATION, )  
CALIFORNIA DEPARTMENT OF )  
18 VETERANS AFFAIRS, )

19 Intervenor. )

20  
21 Plaintiffs move both for a permanent injunction and  
22 declaratory relief, seeking to invalidate numerous specialized license  
23 plates mounted on California motor vehicles. Plaintiffs contend these  
24 plates were issued through an unconstitutional, standardless statutory  
25 scheme which gives the California Legislature unbridled discretion to  
26 decide whether to authorize issuance of a plate. Each challenged  
27 plate was specifically authorized by statute. Plaintiffs state their  
28 lawsuit is brought against Defendant Steven Gourley in his official

1 capacity as the Director of the Department of Motor Vehicles  
2 ("Gourley" or "DMV") because California has given Gourley authority to  
3 administer its license plate program. Plaintiffs seek to prevent  
4 Gourley from renewing licence plates issued under the challenged  
5 statutes and from issuing any new license plate authorized by the  
6 Legislature under California Vehicle Code § 5060.<sup>1</sup> They also seek an  
7 order requiring Gourley to recall all plates previously issued under  
8 the statutes.

9 Plaintiffs commenced this lawsuit after plaintiff The  
10 Women's Resource Network ("WRN"), a private nonprofit organization,  
11 was unsuccessful in its attempts to have the California Legislature  
12 enact an enabling statute which would have permitted Gourley to issue  
13 WRN's proposed "Choose Life" license plate. These attempts were made  
14 under § 5060, which opens a speech forum for nonprofit organizations  
15 to request issuance of license plates bearing specified messages  
16 and/or graphic designs.

17 Plaintiffs make a First Amendment facial challenge to each  
18 statute, arguing the statutes violate the First Amendment's viewpoint  
19 neutrality principle.<sup>2</sup> At issue is whether the Legislature's denial  
20 of WRN's request for a statute authorizing issuance of its proposed  
21 plate resulted from a legitimate exercise of its licensing authority  
22 or could have resulted from an "illegitimate abuse of censorial  
23 power.'" The Tool Box v. Ogden City Corporation, 355 F.3d 1236, 1241

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24  
25 <sup>1</sup> All citations are to the California Vehicle Code unless  
otherwise stated.

26  
27 <sup>2</sup> This is the only claim left in this action following  
28 Plaintiffs' filing on January 20, 2004, in which they abandoned all  
other claims. That filing responded to an Order requiring briefing on  
the remaining issues in Plaintiffs' First Amended Complaint ("Comp").

1 (10th Cir. 2004) (quoting City of Lakewood v. Plain Dealer Publ'g Co.,  
2 486 U.S. 750, 758 (1988)).

3 This motion is brought in the wake of a preliminary  
4 injunction ("PI"), issued in Plaintiffs' favor on September 4, 2003.  
5 The PI prevents the DMV from approving any new special interest  
6 license plate for a private nonprofit organization under § 5060's  
7 special interest license plate program. (PI at 27.) The PI upheld  
8 Plaintiffs' First Amendment facial challenge to § 5060, finding that  
9 the statute lacks standards to govern what expression is allowed, and  
10 thus could be used by the Legislature to suppress unpopular speech.  
11 See Lakewood, 486 U.S. at 758.

#### 12 DISCUSSION

13 Plaintiffs' present motion seeks to invalidate 29 enabling  
14 statutes and the plates issued thereunder. The statutes are located  
15 in articles 8, 8.4 and 8.5 of California's Vehicle Code. Plaintiffs  
16 contend their motion should be granted without analysis of the speech  
17 in each statute or "the history and status of each plate," arguing  
18 that such analysis is unnecessary because the statutes embody private  
19 speech in a standardless private speech forum and therefore violate  
20 the First Amendment's viewpoint neutrality principle. (Pls.' Mot. at  
21 15; Pls.' Reply at 5.) The DMV counters that the challenged speech is  
22 government speech "because California owns the license plates it  
23 issues," "controls what appears on them . . .," and adopts a plate's  
24 message as its own when it authorizes a plate's issuance. (DMV's  
25 Opp'n at 1 and 11.)

26 Plaintiffs' First Amendment challenge should not be decided  
27 in a vacuum, absent consideration of the statutory enactments  
28 underlying the challenged speech. Analysis of speech fora is involved

1 with a portion of Plaintiffs' challenge, and requires a determination  
2 whether California opened any of the challenged statutes for "a  
3 certain class of speakers." Arkansas Educ. Television Comm'n v.  
4 Forbes, 523 U.S. 666, 679 (1998). This determination is crucial  
5 because "the government [is encouraged] to open its property to some  
6 expressive activity in cases where, if [the government is] faced with  
7 an all-or-nothing choice, it might not open the property at all." Id.  
8 at 680. Also, when deciding whether speech is fundamentally private  
9 or government speech, it should be determined whether a government  
10 program is involved with the speech, and whether the program  
11 effectuates government policy. See generally Sons of Confederate  
12 Veterans, Inc. v. Commissioner of the Va. Dep't of Motor Vehicles, 288  
13 F.3d 610, 619 (4th Cir. 2001) ("SCV I"); see also Downs v. Los Angeles  
14 Unified Sch. Dist., 228 F.3d 1003, 1012 (9th Cir. 2000) (finding that  
15 speech on school bulletin boards was government speech "[b]ecause the  
16 bulletin boards were a manifestation of the school board's  
17 policy . . . and because [it] had final authority over the content of  
18 the bulletin boards . . . ."). Further, identification of the primary  
19 speaker is of paramount importance because, if the government is found  
20 to have engaged in authorized government speech, curtailing that  
21 speech could interfere with the government's sovereign functions, "for  
22 instance[,] to promote its own policies or to advance a particular  
23 idea. . . ." Bd. of Regents of Univ. of Wis. v. Southworth, 529 U.S.  
24 217, 235 (2000). Wrongful interference with legitimate government  
25 speech can demean a state's ability to effectuate its public policy.  
26 See generally English v. Marin Mun. Water Dist., 66 Cal. App. 3d 725,  
27 730 (1977) (indicating that California's legislative enactments  
28 reflect its public policy). For these reasons, the text of, and some

1 legislative history for, the enabling statutes which govern the  
2 challenged speech is considered.

3 Defendants Yosemite Foundation a/k/a/ The Yosemite Fund  
4 ("Yosemite" or "Yosemite Foundation") and California Department of  
5 Veterans Affairs ("CDVA") moved for and were allowed to intervene  
6 after the PI issued. Both intervenors oppose Plaintiffs' present  
7 motion. Yosemite argues that the specialty license plate it sponsored  
8 under § 5060's special license plate program, which was authorized by  
9 enabling statute § 5064, should not be enjoined because it constitutes  
10 government speech that "expresses the importance of the preservation  
11 and restoration of Yosemite National Park to the state of California."  
12 (Yosemite Opp'n at 26.) Yosemite also argues Plaintiffs lack  
13 standing, that the Tax Injunction Act precludes the relief Plaintiffs  
14 seek, and that Plaintiffs' claim constitutes a non-justiciable  
15 political question. CDVA argues the veterans' special license plate  
16 it sponsored under § 5060, which was authorized by enabling statute  
17 § 5068, should not be enjoined because it embodies government speech.  
18 CDVA also challenges Plaintiffs' standing.

19 I. Standing

20 CDVA argues Plaintiffs have not suffered any injury for  
21 standing purposes. Moreover, Yosemite and CDVA argue any alleged  
22 injury suffered by Plaintiffs was not caused by Gourley and cannot be  
23 remedied by him. The Court is obligated to ensure that standing  
24 exists and to raise the issue sua sponte, if necessary. San Francisco  
25 Drydock, Inc. v. Dalton, 131 F.3d 776, 778 (9th Cir. 1997).

26 "To establish standing a plaintiff must demonstrate: (1) the  
27 invasion of a legally-protected interest; (2) a causal connection  
28 between the injury and the defendant's conduct; and (3) a likelihood

1 that the court can redress the injury by a favorable decision."  
2 Oregon Natural Desert Ass'n v. Dombeck, 172 F.3d 1092, 1094 (9th Cir.  
3 1998) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61  
4 (1992)). "The standing requirement derives from Article III, Section  
5 2 of the United States Constitution." Johnson v. Weinberger, 851 F.2d  
6 233, 235 (9th Cir. 1988). That provision requires a party to  
7 demonstrate he or she "has suffered injury-in-fact which 'fairly can  
8 be traced' to acts or omissions of the [sued] party." Id. Standing  
9 will not be found "[w]hen '[s]peculative inferences' are necessary  
10 . . . to establish either injury or the connection between the alleged  
11 injury and the act challenged. . . ." Id.

12 Plaintiffs Dana Serrano and Kent Peters's response relies on  
13 conclusory arguments which do not demonstrate standing. The only  
14 allegation concerning each of these plaintiffs' standing follows:

15 Both own a passenger car . . . and would like to  
16 purchase a specialty license plate expressing  
17 their view that all life is valuable and should be  
18 cherished and respected, but are unable to  
19 purchase a specialty license plate which says  
20 'Choose Life' or a similar message consistent with  
21 their view that would support adoption.

19 (Comp. ¶ 3.) Although the plate they desire to purchase represents a  
20 cognizable interest, the injury necessary for standing "requires more  
21 than an injury to a cognizable interest." Lujan, 504 U.S. at 563.  
22 Section 5060 does not provide the individual plaintiffs with a speech  
23 forum since it is only open to nonprofit organizations. These  
24 plaintiffs have therefore failed to show that rejection of WRN's  
25 application invaded their "legally-protected interest." Oregon  
26 Natural Desert Ass'n, 172 F.3d at 1094. Since their First Amendment  
27 challenges are based entirely on WRN's rejected application to speak,  
28 and they could not have made such an application themselves, they lack

1 standing to bring this suit. See Madsen v. Boise State University,  
2 976 F.2d 1219 (9th Cir. 1992); see also Lakewood, 486 U.S. at 755-56  
3 (indicating that "one who is subject to" a licensing statute may have  
4 standing to challenge the statute without first seeking a license).  
5 Therefore, plaintiffs Dana Serrano and Kent Peters are dismissed from  
6 this action.

7 WRN argues it has standing to stop the California  
8 Legislature "from engaging in content or viewpoint discrimination in a  
9 forum." (Plfs.' Reply at 1.) "'In defining the relevant forum, the  
10 Court has focused on the access sought by the speaker.'" Brown v.  
11 Calif. Dep't of Trans., 321 F.3d 1217, 1222 (9th Cir. 2003) (citation  
12 omitted). WRN has only sought access to the § 5060 forum, located in  
13 article 8.4 of the California Vehicle Code. But a number of  
14 challenged statutes are located outside of that forum, in articles 8  
15 and 8.5. WRN argues it has standing to challenge statutes located in  
16 articles 8 and 8.5, even though it did not seek access to those fora,  
17 because Lakewood provides: "when a licensing statute allegedly vests  
18 unbridled discretion in a government official over whether to permit  
19 or deny expressive activity, one who is subject to the law may  
20 challenge it facially without the necessity of first applying for, and  
21 being denied, a license." 486 U.S. at 755-56. But WRN has shown  
22 neither that the Legislature's enactment of these statutes was  
23 pursuant to the § 5060 special interest license program, nor that the  
24 speech authorized by these statutes concerns the subject matter of  
25 WRN's desired speech.

26 The challenged statutes in articles 8 and 8.5 are:  
27 §§ 5002.8 (Legislative or Congressional Member License Plate), 5005  
28 (Amateur Radio Station License Plate), 5006 (Honorary Consular Officer

1 License Plate), 5006.5 (Foreign Organizations License Plate), 5020-21  
2 (Class D Radio Station License Plate), 5022 (1984 Olympic License  
3 Plate), 5023 (Commemorative Olympic License Plate), 5024  
4 (Commemorative Collegiate License Plate), 5101.2 (Firefighter License  
5 Plate), 5101.3 (Pearl Harbor Survivor License Plate), 5101.4 (Legion  
6 of Valor License Plate), 5101.5 (Former Prisoner of War License  
7 Plate), 5101.6 (Congressional Medal of Honor Recipient License Plate),  
8 5101.7 (1984 Olympic License Plate), 5101.8 (Purple Heart Recipient  
9 License Plate), and 5101.9 (Bill of Rights Bicentennial License  
10 Plate).

11 A forum analysis reveals these statutes are not subject to  
12 WRN's facial First Amendment challenge.

13 "[T]he Court [has] identified three types of fora:  
14 the traditional public forum, the public forum  
15 created by government designation, and the  
16 nonpublic forum." Traditional public fora are  
17 defined by the objective characteristics of the  
18 property, such as whether, "by long tradition or  
19 by government fiat," the property has been  
"devoted to assembly and debate." The government  
can exclude a speaker from a traditional public  
forum "only when the exclusion is necessary to  
serve a compelling state interest and the  
exclusion is narrowly drawn to achieve that  
interest."

20 Designated public fora, in contrast, are created  
21 by purposeful governmental action. "The government  
22 does not create a [designated] public forum by  
23 inaction or by permitting limited discourse, but  
24 only by intentionally opening a nontraditional  
25 public forum for public discourse." Hence "the  
26 Court has looked to the policy and practice of the  
27 government to ascertain whether it intended to  
28 designate a place not traditionally open to  
assembly and debate as a public forum." If the  
government excludes a speaker who falls within the  
class to which a designated public forum is made  
generally available, its action is subject to  
strict scrutiny.

Other government properties are either nonpublic  
fora or not fora at all. The government can



1 restrict access to a nonpublic forum "as long as  
2 the restrictions are reasonable and [are] not an  
3 effort to suppress expression merely because  
4 public officials oppose the speaker's view."

5 In summary, traditional public fora are open for  
6 expressive activity regardless of the government's  
7 intent. The objective characteristics of these  
8 properties require the government to accommodate  
9 private speakers. The government is free to open  
10 additional properties for expressive use by the  
11 general public or by a particular class of  
12 speakers, thereby creating designated public fora.  
13 Where the property is not a traditional public  
14 forum and the government has not chosen to create  
15 a designated public forum, the property is either  
16 a nonpublic forum or not a forum at all.

17 [T]he government creates a designated public forum  
18 when it makes its property generally available to  
19 a certain class of speakers, . . . . [But it]  
20 does not create a designated public forum when it  
21 does no more than reserve eligibility for access  
22 to the forum to a particular class of speakers,  
23 whose members must then, as individuals, "obtain  
24 permission," to use it.

25 Forbes, 523 U.S. at 677-78 (citations omitted). Defendants contend  
26 the speech at issue is located in a nonpublic forum. The statutes are  
27 not public fora because they "have not 'traditionally been available  
28 for public expression.'" Brown, 321 F.3d at 1222 (citation omitted).  
Nor do any of the statutes constitute a designated public forum, since  
there is no evidence that the government intended to open any of them  
"for public discourse." Id. The statutes are thus non-public fora.

Restrictions on access to a nonpublic forum are  
constitutional where they are: "(1) 'reasonable in light of the  
purpose served by the forum' and (2) 'viewpoint neutral. . . .'" Id.  
(citations omitted.) "The reasonableness analysis focuses on whether  
the limitation is consistent with preserving the property for the  
purpose to which it is dedicated." Id. (citations and quotation marks  
omitted.) The viewpoint neutrality analysis focuses on whether there

1 has been "content discrimination in which 'the government targets not  
2 subject matter, but particular views taken by speakers on a subject.'"   
3 Id. at 1223 (citation omitted).

4           The challenged statutes in articles 8 and 8.5 concern  
5 special license plates that can be placed into various categories:  
6 status or prestige plates, plates commemorating the Olympic games,  
7 plates commemorating the Bicentennial of the Bill of Rights, or plates  
8 raising revenue for certain postsecondary college institutions. WRN  
9 has shown neither that the exclusion of its proposed speech from any  
10 of these fora was unreasonable in light of the purpose to which each  
11 is dedicated nor that the exclusion violated the viewpoint neutrality  
12 principle. Since none of the statutes express a viewpoint targeting  
13 the subject matter of WRN's proposed "Choose Life" message, there is  
14 no substance to WRN's suggestion that its exclusion was because of its  
15 "pro life" viewpoint. Therefore, this aspect of WRN's challenge is  
16 rejected.

17           Section 5060 provides that certain non-profit organizations  
18 may apply to the DMV for issuance of a specialized license plate if  
19 the Legislature first enacts an enabling statute to allow the plate's  
20 issuance. Nowhere in § 5060 is the Legislature's discretion  
21 circumscribed as to what speech is authorizable. This causes WRN an  
22 injury sufficient for standing because a facial First Amendment  
23 challenge lies whenever a licensing law "vests unbridled discretion in  
24 [an official or agency] over whether to permit or deny expressive  
25 activity. . . ." Lakewood, 486 U.S. at 755.

26           Standards provide the guideposts that check the  
27 licensor and allow courts quickly and easily to  
28 determine whether the licensor is discriminating  
against disfavored speech. Without these  
guideposts, post hoc rationalizations by the

1 licensing official and the use of shifting or  
2 illegitimate criteria are far too easy, making it  
3 difficult for courts to determine in any  
4 particular case whether the licensor is permitting  
5 favorable, and suppressing unfavorable,  
6 expression. . . . In sum, without standards to  
7 fetter the licensor's discretion, the difficulties  
8 of proof and the case-by-case nature of  
9 "as-applied" challenges render the licensor's  
10 action in large measure effectively unreviewable.

11 When these risks are sufficiently great, the  
12 remedy is to strike the licensing law in its  
13 entirety. The licensing law cannot be applied to  
14 anyone.

15 The Tool Box, 355 F.3d at 1241.

16 Yosemite contends the California Legislature is entitled to  
17 exercise "unbridled discretion" when deciding what speech is allowed  
18 in California's license plate program, relying on the principle  
19 discussed in F.C.C. v. Beach Communications, Inc., 508 U.S. 307  
20 (1993). (Yosemite Opp'n at 38-40.) That principle states "judicial  
21 intervention [into legislative decisions] is generally unwarranted no  
22 matter how unwisely [the judiciary] may think a political branch has  
23 acted." Id. at 313-14 (citation and quotation marks omitted). But  
24 the principle concerns a claim where "the pertinent question . . . is  
25 whether [government] officials reasonably could have believed that the  
26 action was rationally related to a legitimate governmental interest."  
27 Goulart v. Meadows, 345 F.3d 239, 261 (4th Cir. 2003) (emphasis and  
28 citation omitted). This principle does not apply to WRN's First  
Amendment challenge to § 5060 or the enabling statutes enacted under  
it. It is pellucid that a facial challenge to § 5060 is appropriate,  
since the First Amendment requires that California "establish neutral  
criteria to insure that the [plate] licensing decision is not based on  
the content or viewpoint of the speech being considered." Lakewood,  
486 U.S. at 760. California's decision to use the legislative

1 process, rather than a regulatory process, to determine whether a  
2 nonprofit organization can apply for a special interest license plate  
3 under § 5060 does not preclude standing for a facial challenge to the  
4 constitutionality of § 5060. "Clearly if the decision to authorize  
5 specialty plates [was] being made by a government official or  
6 commission under authority delegated by the legislature, the actions  
7 of the official or commission would be subject to judicial review.  
8 Leaving that authority directly in the hands of the [California]  
9 legislature [does] not change the analysis." Henderson v. Stalder,  
10 287 F.3d 374, 389 (5th Cir. 2002) ("Henderson I") (W. Eugene Davis,  
11 J., dissenting).

12 The remaining standing issues are whether Gourley is  
13 causally connected to WRN's asserted First Amendment injury and  
14 whether WRN can seek to redress its injury through this suit. Since  
15 Gourley administers the enabling statutes enacted pursuant to the  
16 procedures prescribed in § 5060, and is responsible for issuance of  
17 specialty license plates authorized by the statutes, the causation and  
18 redressability requirements of standing are satisfied. See American  
19 Booksellers Foundation v. Dean, 342 F.3d 96 (2d Cir. 2003) (enjoining  
20 enforcement of a statute by Attorney General because it was found  
21 unconstitutional). WRN has standing to bring a facial challenge to  
22 § 5060 and to seek to enjoin Gourley's administration of enabling  
23 statutes enacted under § 5060.

24 II. Tax Injunction Act

25 Yosemite argues that the aspect of WRN's suit seeking to  
26 enjoin its enabling statute is barred by the Tax Injunction Act,  
27 prescribed in 28 U.S.C. § 1341. This Act prohibits federal courts  
28 from enjoining "the assessment, levy or collection of any tax under

1 State law where a plain, speedy and efficient remedy may be had in the  
2 courts of such state." Id. It applies only if the challenged statute  
3 imposes a "tax" rather than a regulatory fee. "Distinguishing a tax  
4 from a fee often is a difficult task. Indeed, 'the line between a  
5 "tax" and a "fee" can be a blurry one.'" Home Builders Ass'n v. City  
6 of Madison, Miss., 143 F.3d 1006, 1011 (5th Cir. 1998) (citation  
7 omitted). "The classic tax is imposed by a state or municipal  
8 legislature, while the classic fee is imposed by an agency upon those  
9 it regulates." Id. "[T]hree primary factors in determining whether  
10 an assessment is a tax [are]: (1) the entity that imposes the  
11 assessment; (2) the parties upon whom the assessment is imposed; and  
12 (3) whether the assessment is expended for general public purposes, or  
13 used for the regulation or benefit of the parties upon whom the  
14 assessment is imposed." Bidart Bros. v. California Apple Comm'n, 73  
15 F.3d 925, 931 (9th Cir. 1996).

16 Yosemite argues the fees imposed on motorists for special  
17 license plates issued under § 5064 are "taxes" because "the proceeds  
18 go[] to a general fund and [are] spent for the benefit of the entire  
19 community." (Yosemite Opp'n at 22.) But the fees for the Yosemite  
20 plate are additional to the regular fees for a standard license plate  
21 and are imposed only on motorists who voluntarily request issuance of  
22 a Yosemite license plate. Section 5064 allocates the fees motorists  
23 expend for the plates into two funds which are separate from the  
24 general fund: one-half is placed in the "Yosemite Foundation Account"  
25 "for . . . the exclusive trust purposes of preservation and  
26 restoration projects in Yosemite National Park" and "one-half in the  
27 California Environmental License Plate Fund." § 5064(c)(1)-(2). The  
28 California Environmental License Plate Fund is prescribed in Public

1 Resources Code § 21191, and the Legislature declares in Public  
2 Resources Code § 21190 that money deposited in the Fund is to be used  
3 for environmental purposes.

4 Special fees collected from motorists electing to benefit  
5 the Yosemite National Park and/or California environmental causes do  
6 not constitute a tax. The fees are voluntarily paid by a limited  
7 group of motorists who wish to both support a federal national park  
8 and/or California environmental causes, and presumably desire to  
9 display that support on their license plates. See Trailer Marine  
10 Transp. Corp. v. Rivera Vazquez, 977 F.2d 1, 6 (1st Cir. 1992)  
11 (finding "the fact[s] that the fees paid [we]re held separately from  
12 general state funds" and were "collected only from those seeking the  
13 privilege of driving on state highways" supported a conclusion that  
14 the fees were not a "tax"). Plainly, the Tax Injunction Act does not  
15 apply.<sup>3</sup>

16 III. Permanent Injunction

17 A. Section 5060

18 Before WRN can prevail on its motion to permanently enjoin  
19 California's use of § 5060, it must establish "[t]he requirements for  
20 the issuance of a permanent injunction[, which] are the likelihood of  
21 substantial and immediate irreparable injury and the inadequacy of  
22 remedies at law." Easyriders Freedom F.I.G.H.T. v. Hannigan, 92 F.3d  
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24 <sup>3</sup> Yosemite Foundation also argues WRN's challenge to § 5064  
25 concerns a non-justiciable political question. (Yosemite Opp'n 15-  
26 21.) Decision on this argument requires determination of the nature  
27 of the speech at issue. Since that determination will make it  
28 unnecessary to "reach the question of the impact of the political  
question doctrine on this [challenge]," the argument is rejected as  
moot. United States v. Bozarov, 974 F.2d 1037, 1045 n.9 (9th Cir.  
1992).

1 1486, 1495 (9th Cir. 1996) (citations and quotation marks omitted).  
2 Requests for injunctive relief must be scrutinized closely "to make  
3 sure that the remedy protects the plaintiffs' constitutional and  
4 statutory rights, but does not require more of state officials than is  
5 necessary to assure their compliance with . . . law." Id. at 1496.  
6 The "substantial and immediate irreparable injury" requirement "cannot  
7 be met [if] there is no showing of any real or immediate threat that  
8 the plaintiff will be wronged again." City of Los Angeles v. Lyons,  
9 461 U.S. 95, 111 (1983). Thus, to obtain injunctive relief, WRN must  
10 make "[a] reasonable showing of a sufficient likelihood that [it] will  
11 be injured again. . . ." Kruse v. State of Hawai'i 68 F.3d 331, 335  
12 (9th Cir. 1995).

13 Section 5060 grants California legislators unconstitutional,  
14 unfettered discretion to deny a private nonprofit organization's  
15 request for an enabling statute authorizing issuance of a plate. See  
16 American Civ. Lib. Union, NV v. City of Las Vegas, 333 F.3d 1092, 1107  
17 (9th Cir. 2003). This aspect of the forum is facially  
18 unconstitutional under the First Amendment because no standard governs  
19 the decision who may speak. The First Amendment does not allow the  
20 government to use a standardless forum to select private speakers  
21 because the government may use such a forum to present views it finds  
22 acceptable while denying access to those "'wishing to express less  
23 favored or more controversial views.'" Henderson I, 287 F.3d at 387  
24 (W. Eugene Davis, J., dissenting) (citation omitted).<sup>4</sup> Therefore, the  
25

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26 <sup>4</sup> Since viewpoint discrimination is unconstitutional in any  
27 forum, a forum analysis of § 5060 is unnecessary. See Rosenberger v.  
28 Rector and Visitors of University of Virginia, 515 U.S. 819, 829-830

(continued...)

1 Director of the California Department of Motor Vehicles is permanently  
2 enjoined from approving any new special interest license plate under  
3 the scheme now prescribed in § 5060 for private non-profit  
4 organizations.<sup>5</sup>

5 B. Enabling Statutes Enacted Under § 5060

6 WRN also seeks to permanently enjoin all enabling statutes  
7 argued to have been enacted under § 5060's special interest license  
8 plate program. Since § 5060 is located in Article 8.4, WRN argues  
9 that "any plate enacted according to Article 8.4" must be enjoined.<sup>6</sup>

10 \_\_\_\_\_  
11 <sup>4</sup>(...continued)

12 (1995) (holding viewpoint discrimination is unconstitutional in a  
13 designated public forum); Forbes, 523 U.S. at 677-78 (holding  
14 viewpoint discrimination is unconstitutional in a nonpublic forum).

15 <sup>5</sup> WRN also seeks declaratory relief. But a federal court need  
16 not issue declaratory relief "[w]here a party [has obtained] . . . a  
17 substantially similar alternative remedy such as an injunction."  
18 Kinghorn v. Citibank, N.A., 1999 WL 31534, at \*7 (N.D. Cal. Jan. 20,  
19 1999); see also Allis-Chalmers Corp. v. Arnold, 619 F.2d 44, 46 (9th  
20 Cir. 1980) (finding judge may refuse declaratory relief "[w]here more  
21 effective relief can be obtained by other proceedings"); Smith v.  
22 Metro. Property & Liability Inc. Co., 629 F.2d 757, 759 (2d Cir. 1980)  
23 (finding judges have discretion to deny declaratory relief where an  
24 alternative remedy is better or more effective); Cartier v. Sec. of  
25 State, 506 F.2d 191, 200 (D.C. Cir. 1974) (same). WRN's request for  
26 declaratory relief is denied in light of the permanent injunction  
27 ruling.

28 <sup>6</sup> WRN also argues any statute "referencing § 5060" is  
unconstitutional, and that the Firefighter's statute located in  
article 8.5 and codified in § 5101.2 is such a statute, and must be  
enjoined. (Pls.' Mot. at 5 and 17.) The Firefighter's statute has  
not been shown to have been enacted under § 5060's special interest  
license plate program. The text of § 5101.2 states "[a]ny license  
plates issued pursuant to this section shall be issued in accordance  
with Section 5060." § 5101.2(a) (Emphasis added). This reference to  
§ 5060 concerning issuance of license plates does not state this  
statute was enacted by the Legislature under the § 5060 special  
license plate program. See Section I, infra (where the Firefighter's

(continued...)



1 (Pls.' Mot. at 17). The following special interest plates are within  
2 the scope of this argument: §§ 5062 (Blue Sky License Plate), 5064  
3 (Yosemite Foundation License Plate), 5066 (California Memorial License  
4 Plate), 5067 (California Coastal Commission License Plate), 5068  
5 (Veterans License Plate), 5070 (Breast Cancer Treatment License  
6 Plate), 5071 (AIDS Research License Plate), 5071.1 (Girl Scouts of  
7 America License Plate), 5072 (Have a Heart, Be a Star, Help Our Kids  
8 License Plate), 5073 (Ronald Reagan Presidential Library License  
9 Plate), 5074 (License Plate for the Arts), 5075 (Lake Tahoe  
10 Conservancy License Plate), and 5080 (Rotary International License  
11 Plate).

12 Six of these statutes have been repealed. Specifically,  
13 California Senate Bill 315 indicates the following five enabling  
14 statutes are repealed: §§ 5070 (Breast Cancer Treatment License  
15 Plate), 5071 (Aids Research License Plate), 5071.1 (Girl Scouts of  
16 America License Plate), 5073 (Ronald Reagan Presidential Library  
17 License Plate), and 5080 (Rotary International License Plate). See  
18 2003 Cal. Legis. Serv. Ch. 594 (S.B. 315) (West). The "Rosenthal Blue  
19 Sky License Plate Program," enabled by § 5062 was repealed by its own  
20 terms as of January 1, 1997. § 5062(j). WRN's motion is therefore  
21 moot as to these statutes. See Foster v. Carson, 347 F.3d 742, 745  
22 (9th Cir. 2003) (stating where there is no longer a possibility of  
23 obtaining relief for a claim, "'that claim is moot and must be  
24 dismissed for lack of jurisdiction'"). Since this aspect of WRN's  
25 motion is moot, its challenge to these statutes is rejected.

26 \_\_\_\_\_  
27 <sup>6</sup>(...continued)  
28 statute is held to be speech in a nonpublic forum which does not  
target the subject matter of WRN's "Choose Life" message).

1 Decision on the remainder of WRN's challenge to enabling  
2 statutes in article 8.4 involves determination whether the speech is  
3 private and/or government speech.

4 It is well established that "the government can  
5 speak for itself. . . ." The government may  
6 promote its policies and positions either through  
7 its own officials or through its agents. This  
8 authority to "speak" necessarily carries with it  
9 the authority to select from various viewpoints  
10 those that the government will express as its own.

11 SCV I, 288 F.3d at 616-17. The Supreme Court held in Rust v.  
12 Sullivan, 500 U.S. 173, 198-200 (1991), that the government's  
13 authority to speak includes funding chosen activities.

14 [Rust] recognized "that when the government  
15 appropriates public funds to promote a particular  
16 policy of its own it is entitled to say what it  
17 wishes" . . . . "In so doing, the Government has  
18 not discriminated on the basis of viewpoint; it  
19 has merely chosen to fund one activity to the  
20 exclusion of the other" . . . . Rust's holding  
21 has been limited to situations in which "the  
22 government is itself the speaker, or instances  
23 . . . in which the government used private  
24 speakers to transmit [its own message]."

25 Brown, 321 F.3d at 1224 (citations omitted). Rust "addresses . . .  
26 the government's ability to exclude from a government-funded program  
27 speech that is incompatible with the program's objectives." Id.

28 WRN contends "the key question is whether [these] specialty  
plates are government speech or [private speech located in] a  
government-sponsored forum for private speech." (Pls.' Mot. at 16.)  
But the speech may represent both private and government speech where  
both the government and a private motorist communicate via the speech.  
Sons of Confederate Veterans, Inc. v. Comm'r of Va. Dept. of Motor  
Vehicles, 305 F.3d 241, 245 (4th Cir. 2002) ("SCV II") (Luttig, J.,  
respecting the denial of rehearing *en banc*). While the Supreme Court  
stated in Wooley v. Maynard, 430 U.S. 705 (1977), that the

1 government's promotion of a state motto on a license plate mounted on  
2 a private vehicle implicated private speech interests because it  
3 required private parties to "use their private property as a 'mobile  
4 billboard' for the State's ideological message, . . ." it is evident  
5 that this speech was also considered to be government speech. Id. at  
6 716. Further, the location of the enabling statute authorizing the  
7 speech does not necessarily dictate that the speech is fundamentally  
8 government or private speech. See SCV I, 288 F.3d at 618 (stating  
9 that factors involved when deciding the nature of the speech include  
10 the "central purpose" of speech, the party exercising "editorial  
11 control," the "literal speaker," and the party bearing "ultimate  
12 responsibility" for the speech); Wells v. City and County of Denver,  
13 257 F.3d 1132, 1141 (10th Cir.), cert. denied, 534 U.S. 997 (2001)  
14 (same).

15 WRN also makes the conclusory argument that "three courts  
16 have found unequivocally that specialty license plates and the  
17 statutory schemes creating them constitute private speech, not  
18 government speech," citing SCV I, Henderson v. Stulder, 265 F. Supp.  
19 2d 699 (E.D. La. 2003) ("Henderson II"), and Planned Parenthood v.  
20 Rose, 236 F. Supp. 2d 564, 570-71 (D.S.C. 2002). (Pls.' Mot. at 16.)  
21 Since Henderson II and Rose rely on the analysis in SCV I, that  
22 analysis is considered. A key factor in the SCV I analysis is "the  
23 net financial impact of the [special plate] program on the [State of  
24 Virginia's] fisc," which was found to be unlike "the kind of selective  
25 funding decisions involved in cases like Rust and [Nat'l Endowment for  
26 the Arts v. ]Finley[, 524 U.S. 569 (1998)]." SCV I, 288 F.3d at 619  
27 (emphasis in original). Here, the language of each enabling statute  
28 evidences that the revenue generated by each plate is earmarked for

1 distribution to specified government funds and programs. These  
2 provisions are similar to the selective funding decisions that the  
3 United States Supreme Court approved in Rust and Finley. Thus the  
4 nature of the speech authorized in each challenged enabling statute  
5 must be determined.

6           The Yosemite statute, embodied in § 5064, directs the DMV to  
7 consult with a private organization, the Yosemite Foundation, to  
8 design a license plate "depicting a significant feature or quality of  
9 Yosemite National Park." § 5064(a). One half of the revenue  
10 generated through the license plate is designated for placement in the  
11 Yosemite Foundation Account for "the exclusive trust purposes of  
12 preservation and restoration projects in Yosemite National Park."<sup>7</sup>

13 \_\_\_\_\_  
14           <sup>7</sup> The discussion of revenue, with respect to all the statutes  
15 addressed in this section except § 5066, omits the DMV's deduction of  
16 its administrative costs from the revenue generated by the special  
17 license plates. The discussion with respect to some of these statutes  
18 also omits mention of deposits into the California Environmental  
19 License Plate Fund. California Public Resources Code § 21191 provides  
20 that the "California Environmental License Plate Fund . . . consists  
21 of the moneys deposited in the fund pursuant to any provision of law."  
22 The purposes of the Fund are specified in Public Resources Code  
23 § 21190, which states in pertinent part:

24           There is in this state the California  
25 Environmental Protection Program, which shall be  
26 concerned with the preservation and protection of  
27 California's environment. In this connection, the  
28 Legislature hereby finds and declares that, since  
the inception of the program . . . , the Department  
of Motor Vehicles has, in the course of issuing  
environmental license plates, consistently  
informed potential purchasers of those plates, by  
means of a detailed brochure, of the manner in  
which the program functions, the particular  
purposes for which revenues from the issuance of  
those plates can lawfully be expended, and  
examples of particular projects and programs that

(continued...)

1 § 5064(c)(1). The projects to which these funds are to be applied  
2 have been chosen pursuant to a cooperative agreement between the  
3 Yosemite Foundation and Yosemite National Park and identified by the  
4 Superintendent of Yosemite National Park. (Yosemite's Undisputed  
5 Facts ¶¶ 4-5; Pls.' Response to Yosemite's Undisputed Facts at 1.)  
6 See 16 U.S.C. § 1a-2(g). The other half of the revenue is placed in  
7 the California Environmental License Plate Fund, to supplement other  
8 state environmental projects. See § 5064(c)(2) and History and  
9 Statutory Notes; Cal. Pub. Res. Code §§ 21190-91. Although the  
10 Yosemite Foundation initially proposed the license plate, this  
11 legislation makes it apparent that California has adopted the plate's  
12 message and purpose as its own. This adoption is also evidenced by  
13 the statutory requirement obligating the Yosemite Foundation to  
14 "report to the Legislature on or before June 30 of each year on its  
15 use and expenditure of the money in the Yosemite Foundation Account."

16  
17 <sup>7</sup>(...continued)

18 have been financed by those revenues. Therefore,  
19 because of this representation by the Department  
20 of Motor Vehicles, purchasers come to expect and  
21 rely that the moneys paid by them will be expended  
22 only for those particular purposes, which results  
in an obligation on the part of the state to  
expend the revenues only for those particular  
purposes.

23 Accordingly, all funds expended pursuant to this  
24 division shall be used only to support  
25 identifiable projects and programs of state  
26 agencies, cities, . . . counties, districts, the  
27 University of California, private nonprofit  
28 environmental and land acquisition organizations,  
and private research organizations which have a  
clearly defined benefit to the people of the State  
of California and which have one or more of the  
[listed purposes in the section].

1 § 5064(d). In the Historical and Statutory Notes, the Legislature  
2 indicated its understanding of the public purpose for which funds in  
3 the Yosemite Foundation Account would be expended:

4 (a) The Legislature finds and declares as follows:

5 (1) The Yosemite Foundation, also known as the  
6 Yosemite Fund, is a tax exempt, nonprofit  
7 organization created for the benefit of Yosemite  
8 National Park, which has provided funds for  
9 numerous projects within the park, including, but  
10 not limited to, the restoration of Stoneman Meadow  
11 in Yosemite Valley, the reintroduction of bighorn  
12 sheep to the park, replanting of numerous black  
13 oak trees in Yosemite Valley, maintenance of back  
country trails, and the restoration of the Happy  
Isles area which now provides access to the park  
for the disabled and handicapped. The Yosemite  
Foundation, which has in excess of 30,000  
contributors, does not raise or spend money for  
the operation of Yosemite National Park but,  
instead, for the preservation and restoration  
needs of the park.

14 Section 1 of Stats., 1992, c. 1273 (AB 2700). This statute reflects  
15 the primary purposes of preserving and restoring Yosemite National  
16 Park, and protecting California's environment.

17 The California memorial statute, prescribed in § 5066,  
18 requires the DMV "in conjunction with the California Highway Patrol,  
19 [to] design and make available for issuance . . . the California  
20 memorial license plate." § 5066(a). Section 5066 provides in  
21 pertinent part:

22 (c) The [DMV] shall deposit the additional revenue  
23 derived from the issuance, renewal, transfer, and  
24 substitution of California memorial license plates  
as follows:

25 (1) Eighty-five percent in the Antiterrorism Fund,  
which is hereby created in the General Fund.

26 (A) Upon appropriation by the Legislature,  
27 one-half of the money in the fund shall be  
28 allocated by the Controller to the Office of  
Criminal Justice Planning to be used solely for  
antiterrorism activities. The office may not use

1 more than 5 percent of the funds appropriated to  
2 it for administrative purposes.

3 (B) Upon appropriation by the Legislature in the  
4 annual Budget Act or in another statute, one-half  
of the money in the fund shall be used solely for  
antiterrorism activities.

5 (2) Fifteen percent in the California Memorial  
6 Scholarship Fund, which is hereby established in  
the General Fund. Moneys deposited in this fund  
7 shall be administered by the Scholarshare  
Investment Board, and shall be available, upon  
8 appropriation in the annual Budget Act or in  
another statute, for distribution or encumbrance  
9 by the board pursuant to Article 21. 5 (commencing  
with Section 70010) of Chapter 2 of Part 42 of the  
10 Education Code.

11 (d) The department shall deduct its costs to  
administer, but not to develop, the California  
12 memorial license plate program. The department may  
utilize an amount of money, not to exceed fifty  
13 thousand dollars (\$50,000) annually, derived from  
the issuance, renewal, transfer, and substitution  
14 of California memorial license plates for the  
continued promotion of the California memorial  
15 license plate program of this section.

16 (e) "Antiterrorism activities" means activities  
related to the prevention, detection, and  
17 emergency response to terrorism that are  
undertaken by state and local law enforcement,  
18 fire protection, and public health agencies. The  
funds provided for these activities, to the extent  
19 that funds are available, shall be used  
exclusively for purposes directly related to  
20 fighting terrorism. Eligible activities include,  
but are not limited to, hiring support staff to  
21 perform administrative tasks, hiring and training  
additional law enforcement, fire protection, and  
22 public health personnel, response training for  
existing and additional law enforcement, fire  
23 protection, and public health personnel, and  
hazardous materials and other equipment  
24 expenditures.

25 (f) Beginning January 1, 2007, and each January 1  
thereafter, the department shall determine the  
26 number of currently outstanding and valid  
California memorial license plates. If that number  
27 is less than 7,500 in any year, then the  
department shall no longer issue or replace those  
28 plates.

1 This statutory language reflects the primary purpose of supporting and  
2 enhancing California's ability to combat terrorist activities.

3           The California Coastal Commission statute, prescribed in  
4 § 5067, requires the DMV, in consultation with the California Coastal  
5 Commission ("CCC") to design and make available for issuance "special  
6 environmental design license plates . . . bear[ing] a graphic design  
7 depicting a California coastal motif." § 5067(a). One half of the  
8 revenue generated by this statute is distributed to the California  
9 Beach and Coastal Enhancement Account for allocation to CCC

10           for expenditure for the Adopt-A-Beach program, the  
11 Beach Cleanup Day program, coastal public  
12 education programs, and grants to local  
13 governments and nonprofit organizations for the  
14 costs of operating and maintaining public beaches  
15 related to these programs. Any funds remaining in  
16 the California Beach and Coastal Enhancement  
17 Account at the end of a fiscal year shall be  
18 allocated by the Controller, after appropriation  
19 by the Legislature, to the State Coastal  
20 Conservancy for coastal natural resource  
21 restoration and enhancement projects and for other  
22 projects consistent with the provisions of  
23 Division 21 (commencing with Section 31000) of the  
24 Public Resources Code.

25 § 5067(c)(1). The other half of the revenue is distributed to the  
26 "California Environmental License Plate Fund." § 5066(c)(2). The  
27 design of the license plate and the distribution of the revenue  
28 reflect the primary purposes of protecting and enhancing California's  
coastline, and protecting California's environment.

          The veterans statute, prescribed in § 5068, provides that  
"any veterans' organization may apply either individually or with  
other veterans' organizations to meet the minimum 5,000 application  
threshold set forth in Section 5060 for special license plates."  
§ 5068(a)(1). It is prescribed in § 5069 that "revenue derived from  
the additional special fees provided in Section 5068, less costs



1 incurred by the [DMV] . . . shall be deposited in the Veterans Service  
2 Office Fund, created by Section 972.2 of the Military and Veterans  
3 Code. . . . The revenue derived from the additional special fee . . .  
4 less costs incurred by the department pursuant to this article, shall  
5 be deposited as follows: (1) One-half in the Veterans Service Office  
6 Fund. (2) One-half in the California Environmental License Plate  
7 Fund." §§ 5069(a), (b)(1), (b)(2). Section 972.2 provides in  
8 pertinent part:

9 [T]he Veterans Service Office Fund shall be  
10 available, upon appropriation by the Legislature,  
11 to the Department of Veterans Affairs for  
12 allocation and disbursement to counties for the  
13 operation of county veterans service offices.

14 . . .

15 It is the intent of the Legislature, in enacting  
16 this section, that revenues from the special  
17 interest license plate . . . and deposited in the  
18 Veterans Service Office Fund, shall be used to  
19 expand the support of county veterans service  
20 offices.

21 Although § 5068 allows private parties to purchase license plates  
22 which refer to individual veterans organizations, the statutory  
23 language reflects the primary purposes of honoring veterans and  
24 funding government veterans agencies.

25 The child health and safety statute, prescribed in § 5072,  
26 requires the DMV to cooperate with the California Highway Patrol and  
27 the Prison Industries Authority in designing a license plate combining  
28 the phrase "Have a Heart, Be a Star, Help Our Kids" with a design  
including "[a] heart shape, a five pointed star, a hand shape, [and] a  
plus-sign shape." § 5072(a). Revenue derived from sale of this plate  
is to "be deposited in the Child Health and Safety Fund . . . and,  
when appropriated by the Legislature . . . be available for the

1 purposes" prescribed in California Welfare and Institutions Code  
2 18285. Welfare and Institutions Code § 18285 provides in pertinent  
3 part:

4 (e) Fifty percent of moneys derived from the  
5 license plate program pursuant to Section 5072 of  
6 the Vehicle Code shall be available, upon  
7 appropriation, for programs which address any of  
8 the following child health and safety concerns and  
9 that are either to be carried out within a  
10 two-year period or whose implementation is  
11 dependent upon one-time initial funding:

12 (1) Child abuse prevention, except that not more  
13 than 25 percent of the moneys in this fund shall  
14 be used for this purpose. Ninety percent of the 25  
15 percent shall be deposited in the county  
16 children's trust fund, established pursuant to  
17 Section 18966 of the Welfare and Institutions  
18 Code, for the support of child abuse prevention  
19 services in the community, and 10 percent of the  
20 25 percent shall be deposited in the State  
21 Children's Trust Fund, established pursuant to  
22 Section 18969, for public education, training, and  
23 technical assistance.

24 (2) Vehicular safety, including restraint warnings  
25 and education programs.

26 (3) Drowning prevention.

27 (4) Playground safety standards.

28 (5) Bicycle safety.

(6) Gun safety.

(7) Fire safety.

(8) Poison control and safety.

(9) In-home safety.

(10) Childhood lead poisoning.

(11) Sudden infant death syndrome.

26 The design of the license plate and the distribution of the revenue  
27 reflects the primary purpose of endorsing and funding activities to  
28 protect the health and safety of children.

1           The "License Plates for the Arts Act of 1993," prescribed  
2 in § 5074, requires the DMV to consult with the California Arts  
3 Council ("CAC") to create a license plate with "a full-plate graphic  
4 design, depicting a significant feature or quality of the State of  
5 California." § 5074(a)-(b). Revenue collected for certain  
6 "additional fees" will be "deposited in the Environmental License  
7 Plate Fund," see § 5074(b)(4), and the remainder of the revenue will  
8 be deposited in the Graphic Design License Plate Account and used by  
9 CAC, "upon appropriation by the Legislature, for arts education and  
10 local arts programming." § 5074(c). The license plate's design and  
11 distribution of revenue reflects a primary purpose of supporting and  
12 funding California's art programs.

13           The Lake Tahoe statute, prescribed in § 5075, requires the  
14 DMV to consult with the Lake Tahoe Conservancy in designing a "special  
15 environmental design license plate[] . . . bear[ing] a full-plate  
16 graphic design depicting a significant feature of Lake Tahoe."  
17 § 5075(a). The revenue from certain "additional fees" is designated  
18 for deposit in the Environmental License Plate Fund, see § 5075(b)(5),  
19 with the remaining revenue deposited in the Lake Tahoe Conservancy  
20 Account for allocation toward "the exclusive trust purposes of  
21 preservation and restoration projects in the Lake Tahoe area and for  
22 the purpose of establishing and improving trails, pathways, and public  
23 access for nonmotorized traffic in that area." § 5075(c). The design  
24 of the plate and designated use of revenue reflects a primary purpose  
25 of supporting and funding actions to protect the environment in the  
26 Lake Tahoe area and make that area usable for public recreation.

27           It is pellucid that the speech on the license plates  
28 authorized by these statutes "is neither exclusively that of the

1 private individuals nor exclusively that of the government, but,  
2 rather, hybrid speech of both." SCV II, 305 F.3d at 245. The  
3 governmental component of the speech evidences that the speech is  
4 fundamentally government speech which promotes California's policies.  
5 WRN has not shown it has a "First Amendment right to dictate or to  
6 contribute to the content of [this government] speech." Downs, 228  
7 F.3d at 1009; Wells, 257 F.3d at 1139. Nor has WRN shown that the  
8 existence of this government speech causes or is likely to cause it  
9 "substantial and immediate irreparable injury." Easyriders, 92 F.3d  
10 at 1495. Therefore, WRN's motion challenging this speech is rejected.

11 CONCLUSION

12 For the reasons set forth above, the Director of the  
13 California Department of Motor Vehicles is permanently enjoined from  
14 issuing any new special interest license plate under the program now  
15 prescribed in § 5060 for private non-profit organizations. The  
16 balance of WRN's challenge is rejected. Judgment is entered in  
17 accordance with this Order.

18  
19 IT IS SO ORDERED.

20 DATED: February 20, 2004

21  
22   
23 GARLAND E. BURRELL, JR.  
24 UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28

United States District Court  
for the  
Eastern District of California  
February 20, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:03-cv-00786

Womens Resource

v.

State of California

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 20, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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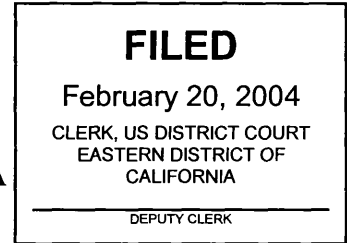
**Jack L. Wagner, Clerk**

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**by: Deputy Clerk**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA



**JUDGMENT IN A CIVIL CASE**

THE WOMEN'S RESOURCE NETWORK, et al

v. CASE NUMBER: CIV S-03-786 GEB PAN

STEVEN GOURLEY, et al

**XX** -- **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE  
COURT'S ORDER OF FEBRUARY 20, 2004.**

Jack L. Wagner,  
Clerk of the Court

ENTERED: February 20, 2004

by: *K Carlos*  
K CARLOS, Deputy Clerk

United States District Court  
for the  
Eastern District of California  
February 20, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:03-cv-00786

Womens Resource

v.

State of California

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 20, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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**Jack L. Wagner, Clerk**

*Jack L. Wagner*

**by: Deputy Clerk**