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11 *Jonathan Kotler*

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 JONATHAN KOTLER,  
16 Plaintiff,

17 v.

18 KATHLEEN WEBB, in her official  
19 capacity as Director of the California  
20 Department of Motor Vehicles,  
21 Defendant.

Case No.: 2:19-cv-2682

22 **COMPLAINT FOR VIOLATION**  
23 **OF FEDERAL CIVIL RIGHTS**  
24 **UNDER 42 U.S.C. § 1983**  
25 **DECLARATORY AND**  
26 **INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. Plaintiff Jonathan Kotler, an attorney who teaches constitutional law at  
3 the Annenberg School at the University of Southern California, is a long-time fan of  
4 the London-based Fulham soccer team.

5 2. After the team enjoyed its most successful season in recent years,  
6 Mr. Kotler applied for a personalized license plate with the team’s “COYW” slogan  
7 with the California Department of Motor Vehicles. A Department official denied  
8 Mr. Kotler’s request, citing a California regulation prohibiting a license plate  
9 configuration that “may carry connotations offensive to good taste and decency.”  
10 *See* Cal. Code Regs. tit. 13, § 206.00(c)(7)(D). In fact, there is no evidence that the  
11 slogan carries racial connotations, and thus no reason that Mr. Kotler should not be  
12 able to express his message the same way that thousands of other Americans express  
13 their messages on personalized license plates every year.

14 **JURISDICTION AND VENUE**

15 3. Mr. Kotler brings this civil rights lawsuit pursuant to 42 U.S.C. § 1983,  
16 for the violation of rights secured by the First Amendment to the United States  
17 Constitution, as applied to the states by the Fourteenth Amendment.

18 4. This Court has jurisdiction over this action pursuant to 28 U.S.C.  
19 §§ 1331 (federal question), 1343 (civil rights), and 2201-2202 (Declaratory  
20 Judgment Act).

21 5. Venue is proper under 28 U.S.C § 1391(b) on the ground that all or a  
22 substantial part of the acts giving rise to Plaintiff’s claims occurred in the Central  
23 District of California.

24 **PARTIES**

25 6. Jonathan Kotler is an associate professor at the Annenberg School for  
26 Communication and Journalism at the University of Southern California.

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1           7. Mr. Kotler is an expert in Constitutional Rights, Media History, and  
2 Media Law. He has been quoted on First Amendment issues in news outlets such as  
3 the *Los Angeles Times*, the *Houston Chronicle*, and the *Chicago Tribune*.

4           8. As an attorney, Mr. Kotler has argued at all levels of the state and  
5 federal court system, including at the Supreme Court of the United States. *See City*  
6 *of Riverside v. Rivera*, 477 U.S. 561 (1986). Mr. Kotler previously served as legal  
7 counsel to the California First Amendment Coalition, the California Freedom of  
8 Information Committee, and the Society of Professional Journalists, Los Angeles  
9 Professional Chapter.

10           9. Kathleen Webb is Director of the California Department of Motor  
11 Vehicles. The Department is charged with administering the specialty license plate  
12 program. Ms. Webb is sued in her official capacity pursuant to *Ex parte Young*, 209  
13 U.S. 123 (1908).

#### 14                                   **FACTUAL ALLEGATIONS**

#### 15                                   **PLAINTIFF’S FREE SPEECH INTERESTS**

16           10. Jonathan Kotler is an avid soccer fan. His interest in the sport began in  
17 the 1950s when he heard, on the radio at a barbershop, of the Munich air disaster  
18 that took the lives of seven athletes from the Manchester United soccer team.

19           11. Mr. Kotler’s favorite soccer team is FC Fulham. He became a supporter  
20 of the team after attending games at Craven Cottage, a stadium on the banks of the  
21 River Thames where Fulham plays its home games.

22           12. Mr. Kotler has been a holder of Fulham season tickets for over a decade.  
23 He travels from Los Angeles to London every year to see the Fulham soccer team  
24 play at Craven Cottage.

25           13. The Fulham soccer team wears white jerseys. The team’s slogan is  
26 COYW, which stands for “Come on You Whites.”

27           14. The phrase “Come on You Whites” carries no racial connotation.

28           15. Fulham is one of many sports teams that is described by the color of its

1 uniforms. In England, Chelsea is known as “the Blues,” and Liverpool is known as  
2 “the Reds.” New Zealand’s famed rugby team is known as the “All Blacks.”

3 16. Fulham’s official hashtag on Twitter is #COYW. The phrase is used in  
4 letters signed by Shadid Khan, the team’s Pakistani-American owner. National  
5 media outlets such as NBC use the term, reporting that “newly promoted Fulham  
6 has already shelled out nearly \$50 million this summer as the Whites look to secure  
7 Premier League status.” These documents are incorporated in Exhibit 2.

8 17. Fulham enjoyed its most successful season in recent years in 2017-  
9 2018. The team finished third in the second-tier English Football League and was  
10 promoted to the top league in England: the Premier League.

11 18. To celebrate the team’s success, Mr. Kotler applied for a personalized  
12 license plate with the configuration “COYW.”

13 **CALIFORNIA REGULATIONS ON**  
14 **PERSONALIZED LICENSE PLATES**

15 19. California allows “special interest” license plates for automobiles,  
16 commercial vehicles, trailers, and motorcycles. Special interest plates may be  
17 ordered in sequential (standard numbering) or personalized (custom numbers/letters)  
18 configurations.

19 20. Environmental License Plates are standard design California plates that  
20 are personalized. Environmental plates can have two to seven characters, which may  
21 be numbers, letters, or a combination of both.

22 21. Individuals applying for Environmental License Plates must pay a  
23 registration fee, as well as annual renewal fees. The fees collected are used to support  
24 environmental programs.

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1           22. In addition to the fee, an applicant for an Environmental License Plate  
2 must provide, along with other information, her “true full name,” the “name of the  
3 recipient, if the plates are a gift,” and “the applicant’s first, second, and third choices  
4 of the configuration of letters and numbers to appear on the license plates and the  
5 meaning of each.” *See* Cal. Code Regs. tit. 13, § 206.00(c).

6           23. The California Vehicle Code states that “the department may refuse to  
7 issue any combination of letters or numbers, or both, that may carry connotations  
8 offensive to good taste and decency.” Cal. Veh. § 5105. The implementing  
9 regulations instruct the Department to “refuse any configuration that may carry  
10 connotations offensive to good taste or decency” based on “criteria which includes,  
11 but is not limited to” several factors. Cal. Code Regs. tit. 13, § 206.00(c)(7)(D).

12           24. Those criteria include a configuration containing “an insulting or  
13 degrading term,” a configuration with a term considered “repulsive,” or a  
14 configuration with “a negative connotation to a specific group.” *Id.*

15           25. The Department is required to “cancel and order the return of any  
16 Environmental License Plate previously issued which contains any configuration of  
17 letters and/or numbers which the department later determines may carry  
18 connotations offensive to good taste and decency.” *Id.* § 206.12(a).

19           26. The regulations do not specify who makes the determination whether a  
20 configuration “may carry connotations offensive to good taste and decency.” *Id.*

21           27. The regulations do not set out specific guidelines the decisionmaker  
22 uses to make the determination of whether a license plate configuration “may carry  
23 connotations offensive to good taste and decency.” *Id.*

24           28. The regulations do not specify what type of evidence that the  
25 decisionmaker may provide in rejecting an application for an Environmental License  
26 Plate, or require the decisionmaker to provide any evidence in rejecting an  
27 application for an Environmental License Plate.

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1                                   **THE DEPARTMENT DENIES MR. KOTLER’S**  
2                                   **REQUEST FOR A PERSONALIZED LICENSE PLATE**

3           29.   On June 1, 2018, Mr. Kotler received a letter from the California  
4 Department of Motor Vehicles denying his application for an Environmental License  
5 Plate with the proposed configuration of COYW. A copy of this letter is attached as  
6 Exhibit 1. The letter stated that the license plate configuration was denied because it  
7 “carr[ies] connotations offensive to good taste and decency.” *Id.*

8           30.   The Department’s letter stated that it is “difficult” to balance “an  
9 individual’s constitutional right to free speech and expression while protecting the  
10 sensibilities of all segments of our population.” *Id.* The letter provided an address to  
11 which Mr. Kotler could submit a letter of explanation for further review.

12           31.   On July 3, 2018, Mr. Kotler submitted a letter of explanation for further  
13 review. The letter explained that “COYW” is a term commonly used to support the  
14 Fulham soccer team. A copy of this letter is attached as Exhibit 2. As proof, Mr.  
15 Kotler attached several documents, including a letter from the team’s chairman and  
16 an article by NBC that referred to the team as “the Whites.” *See id.*

17           32.   On July 17, 2018, the Department sent Mr. Kotler another letter. The  
18 letter stated: “Upon review, we are remaining with our original determination that  
19 the configuration is unacceptable. ‘Come on You Whites’ can have racial  
20 connotations.” A copy of this letter is attached as Exhibit 3.

21                                   **CLAIMS FOR RELIEF**

22                                   **CLAIM I**

23                                   **CAL. CODE REGS. TIT. 13, § 206.00(c)(7)(D)**  
24                                   **VIOLATES THE FIRST AMENDMENT ON ITS FACE**

25           33.   Mr. Kotler incorporates the allegations in the preceding paragraphs.

26           34.   Personalized license plate configurations on Environmental License  
27 Plates reflect the applicant’s personal expression. Thus, Cal. Code Regs. tit. 13,  
28 § 206(c)(7)(D) restricts an individual’s First Amendment free speech rights.

1 35. California’s regulation on personalized license plate configurations that  
2 “may carry connotations offensive to good taste and decency” impose content-based  
3 and viewpoint-based restrictions on speech. Because personalized license plates  
4 exist as a forum of expression for the plate’s holder, the regulation is subject to strict  
5 scrutiny.

6 36. California’s regulation on personalized license plate configurations that  
7 “may carry connotations offensive to good taste and decency” is not narrowly  
8 tailored to any compelling governmental interest.

9 37. Even if reasonableness review applies, California’s regulation on  
10 personalized license plate configurations that “may carry connotations offensive to  
11 good taste and decency” is invalid under the First Amendment.

12 38. California’s regulation on personalized license plate configurations  
13 forces the Department to make inconsistent and subjective decisions about which  
14 license plate configurations are prohibited under Cal. Code Regs. tit. 13,  
15 § 206(c)(7)(D).

16 39. Department officials enforcing Cal. Code Regs. tit. 13, § 206(c)(7)(D)  
17 determine the meaning of configurations based on the subjective meaning supplied  
18 by the applicant and the official’s own subjective judgments about the meaning.

19 40. Because Cal. Code Regs. tit. 13, § 206(c)(7)(D) imposes a vague ban  
20 on “connotations offensive to good taste and decency,” the regulation allows  
21 Department decisionmakers to discriminate on the basis of viewpoint.

22 41. Because it imposes a categorical ban on personalized license plate  
23 configurations that “may carry connotations offensive to good taste and decency,”  
24 Cal. Code Regs. tit. 13, § 206(c)(7)(D) is facially overbroad.

25 42. The Department currently maintains and actively enforces a set of laws,  
26 practices, policies, and procedures under color of state law that deprive Mr. Kotler  
27 of his right to freedom of speech, in violation of the First and Fourteenth  
28 Amendments to the United States Constitution and 42 U.S.C. § 1983.

1 43. Mr. Kotler has no adequate remedy at law to compensate for the loss of  
2 these fundamental freedoms and will suffer irreparable injury absent an injunction  
3 restraining the Department’s enforcement of the regulations complained of in this  
4 action. Mr. Kotler is therefore entitled to declaratory and permanent injunctive relief  
5 against the continued enforcement and maintenance of the Department’s  
6 unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.

7 **CLAIM II**

8 **CAL. CODE REGS. TIT. 13, § 206.00(C)(7)(D)**  
9 **VIOLATES THE FIRST AMENDMENT**  
10 **AS APPLIED TO MR. KOTLER**

11 44. Mr. Kotler incorporates the allegations in the preceding paragraphs.

12 45. The Department’s decision to reject an Environmental License Plate  
13 with the personalized configuration of “COYW” violates the First Amendment.

14 46. The phrase “COYW” is associated with the Fulham soccer team.  
15 “COYW” carries no racial connotations.

16 47. The Department rejected the “COYW” license plate configuration  
17 without any evidence of the supposed harms of the configuration.

18 48. The Department has no evidence that a ban on “COYW” license plate  
19 configurations furthers any legitimate governmental interest.

20 49. The Department currently maintains and actively enforces a set of laws,  
21 practices, policies, and procedures under color of state law that deprive Mr. Kotler  
22 of his right to freedom of speech, in violation of the First and Fourteenth  
23 Amendments to the United States Constitution and 42 U.S.C. § 1983.

24 50. Mr. Kotler has no adequate remedy at law to compensate for the loss of  
25 these fundamental freedoms and will suffer irreparable injury absent an injunction  
26 restraining the Department’s enforcement of the regulations complained of in this  
27 action. Mr. Kotler is therefore entitled to declaratory and permanent injunctive relief  
28



1 against continued enforcement and maintenance of the Department's  
2 unconstitutional laws, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.

3 **REQUESTED RELIEF**

4 WHEREFORE, Plaintiff prays for judgment from this Court as follows:

5 1. Declare Cal. Code Regs. tit. 13, § 206.00(c)(7)(D), facially and as  
6 applied to Plaintiff, unconstitutional under the First Amendment.

7 2. Enjoin Defendant, her employees, agents, successors, assigns, and all  
8 persons acting in concert with her, from continuing to enforce the ban on  
9 personalized license plate configurations that “may carry connotations offensive to  
10 good taste and decency” contained in Cal. Code Regs. tit. 13, § 206.00(c)(7)(D), as  
11 well as any and all implementing administrative rules and regulations, and practices  
12 and policies by which Defendant enforces, the provision against Plaintiff or any  
13 other person.

14 3. Award Plaintiff his costs and reasonable attorneys’ fees pursuant to  
15 42 U.S.C. § 1988.

16 4. Grant such other relief that this Court deems just and proper.

17 DATED: April 9, 2019.

18 Respectfully submitted,  
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