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April 9, 2019

*Via mail, email, and facsimile*

Commissioner Herb Frierson  
Mississippi Department of Revenue  
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Re: *“In God We Trust” license plates*

Dear Commissioner Frierson and Attorney General Hood:

We have received complaints that Mississippi’s new standard license plate contains the motto “In God We Trust.” Covering those words is a misdemeanor punishable by a \$25 fine. *See* Miss. Code. Ann. § 27-19-31(2). Obtaining a specialty plate that does not contain that language costs at least \$30 annually, except for certain plates that are available only to small, restricted groups of state residents. *See Special Tag Fee Distribution*, State of Mississippi Department of Revenue, <https://bit.ly/2YCYTtA> (last visited Apr. 4, 2019). We further understand that trailer owners are required to display the standard “In God We Trust” license plate on their trailers and do not have the option to purchase a specialty plate. *See, e.g.*, Miss. Code. Ann. § 27-19-45(1).

Government must never pressure citizens to publicly display any religious belief. Yet Mississippi is forcing its many residents who do not believe in a god to choose between displaying a religious message that is contrary to their beliefs or paying a fine or fee. Trailer owners are not even given that choice. Mississippi’s conduct violates multiple constitutional provisions and statutes, including the Free Speech, Establishment, and Free Exercise Clauses of the U.S. Constitution’s First Amendment; Article 3, Sections 13 and 18, of the Mississippi Constitution; and the Mississippi Religious Freedom Restoration Act.

***Free Speech Clause.*** Mississippi’s actions here are remarkably similar to ones struck down by the U.S. Supreme Court in *Wooley v. Maynard*, 430 U.S. 705 (1977). There, the State of New Hampshire’s standard license plate contained the message “Live Free or Die.” *Id.* at 707. Covering any portion of the plate—as did the plaintiff, who had religious, moral, and philosophical objections to displaying the message—was a misdemeanor that resulted in a \$25 fine. *Id.* at 707–08.

The Supreme Court ruled that New Hampshire violated the Free Speech Clause by coercing the plaintiff to display a message to which he objected. The Court explained that “[t]he First Amendment

protects the right of individuals to hold a point of view different from the majority and to refuse to foster . . . an idea they find morally objectionable.” *Id.* at 715. Yet New Hampshire required objecting drivers to “use their private property as a ‘mobile billboard’ for the State’s ideological message or suffer a penalty.” *Id.*

Recently, in *Walker v. Texas Division, Sons of Confederate Veterans*, 135 S. Ct. 2239 (2015), the Supreme Court reaffirmed *Wooley*. The Court explained that even though license plates are government speech, the Free Speech Clause prohibits the government from coercing private citizens to display license-plate messages that they find objectionable. *See id.* at 2246, 2252–53.

It does not matter that, unlike New Hampshire in *Wooley*, Mississippi gives motorists an option to purchase for \$30 per year specialty license plates that do not contain religious messages. In *Cressman v. Thompson*, 719 F.3d 1139, 1142, 1148, 1156 (10th Cir. 2013), the court concluded that requiring a motorist to choose between displaying a license plate with an objectionable message and paying \$34.50 annually for an alternative plate was coercive under the Free Speech Clause. Indeed, the \$30 annual fee imposed by Mississippi is greater than the \$25 fine found coercive in *Wooley*, and in *Wooley* motorists could have avoided paying fines altogether by owning antique automobiles that were not required to display the “Live Free or Die” plate. *See* 430 U.S. at 707 n.1. Moreover, in Mississippi, trailer owners do not have an option of an alternative plate at all.

**Establishment Clause.** The Establishment Clause prohibits government from “coerc[ing] anyone to support or participate in religion or its exercise.” *Lee v. Weisman*, 505 U.S. 577, 587 (1992). For example, in *Torcaso v. Watkins*, 367 U.S. 488, 492–96 (1961), the Supreme Court held that the Establishment Clause prohibited a state from requiring people seeking commissions as notaries to declare a belief in God. Yet here, Mississippi coerces motorists to publicly and continuously affirm a belief in God whenever they are driving their vehicles.

**Free Exercise Clause.** The state law struck down in *Torcaso* violated the Free Exercise Clause as well (*see id.* at 496), as the Supreme Court confirmed in *McDaniel v. Paty* (*see* 435 U.S. 618, 626–27 (1978) (four-Justice plurality opinion); *id.* at 634–35 (Brennan, J., concurring); *id.* at 642–43 (Stewart, J., concurring)). As the Court stated in *Employment Division v. Smith*, the Free Exercise Clause bars government from “compel[ling] affirmation of religious belief.” 494 U.S. 872, 877 (1990); *accord* *Sherbert v. Verner*, 374 U.S. 398, 402 (1963). Thus, the Fifth Circuit has held that the Free Exercise Clause protects atheists from being coerced to make affirmations that they consider religious. *See* *Society of Separationists v. Herman*, 939 F.2d 1207, 1215 (5th Cir. 1991). Mississippi’s coercion of nonbelievers to display the message “In God We Trust” on their automobiles therefore violates the Free Exercise Clause as well.

**Mississippi Constitution.** Sections 13 and 18 of Article 3 of the Mississippi Constitution provide protections similar to those of the Free Speech, Establishment, and Free Exercise Clauses of the federal First Amendment. *See, e.g.,* *Schmidt v. Catholic Diocese of Biloxi*, 18 So. 3d 814, 824 n.4 (Miss. 2009); *Evers v. State*, 131 So. 2d 653, 656 (Miss. 1961). So Mississippi is violating these provisions of its state constitution too.

**Mississippi Religious Freedom Restoration Act.** The Mississippi Religious Freedom Restoration Act prohibits Mississippi from “substantially burden[ing] a person’s exercise of religion” unless it acts “in furtherance of a compelling governmental interest” through “the least restrictive

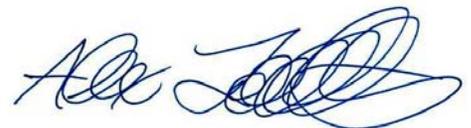
means of furthering” that interest. Miss. Code. Ann. § 11-61-1(5).<sup>\*</sup> The inclusion of “In God We Trust” on Mississippi’s standard license plate substantially burdens the religious exercise of numerous Mississippi atheists and Humanists of their belief that no god exists, by financially pressuring them to display adherence to the opposite doctrine. Mississippi has no compelling interest in displaying “In God We Trust” on its license plates. Even if there were such an interest, requiring nonbelievers to pay fines or fees to avoid displaying a belief in a god on their plates would not be the least restrictive means of furthering the interest.

***Requested remedy.*** We therefore request that you make available without extra charge, to any Mississippi residents who object to the display of the message “In God We Trust” on their license plates, an alternative plate that does not contain the message. For example, Mississippi could provide objecting motorists, at the same price as the “In God We Trust” plate, the “Birthplace of America’s Music” plate that served as the state’s standard license plate from 2013 through 2018.

We further request that you take appropriate administrative action to prohibit enforcement, against any people who cover the words “In God We Trust” or the word “God” on their license plates, of the provision in Mississippi Code § 27-19-31(2) that bars covering any portion of a license plate. Such administrative action alone, however, would not fully address the constitutional violation here, because many Mississippi nonbelievers would feel uncomfortable or unsafe covering “In God We Trust” or “God” on their license plates, due to fear that doing so might induce law-enforcement personnel to treat them negatively and induce passersby to damage their vehicles or even physically harm them. *See Lee*, 505 U.S. at 594 (“the government may no more use social pressure to enforce orthodoxy than it may use more direct means”). The only way to sufficiently address the constitutional violation here would be to provide all objecting Mississippi residents—including the owners of trailers and any other vehicles for which specialty plates are not available—with an alternative standard plate that has no religious content, for no extra charge.

Please respond to this letter within thirty days to inform us how you plan to proceed. If you believe that any of our understandings of the relevant facts are incorrect, please advise us. Please do not hesitate to contact me at 202-466-3234 or [luchenitser@au.org](mailto:luchenitser@au.org) if you would like to discuss this matter. Thank you for your consideration and attention.

Very truly yours,



Alex J. Luchenitser  
Associate Legal Director

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<sup>\*</sup> The Mississippi Religious Freedom Restoration Act is a statute separate from the Mississippi Protecting Freedom of Conscience from Government Discrimination Act (Miss. Code. Ann §§ 11-62-1 to 19), which was held unconstitutional by a federal district court before that decision was vacated on standing grounds. *See Barber v. Bryant*, 193 F. Supp. 3d 677 (S.D. Miss. 2016), *rev’d on standing grounds*, 860 F.3d 345 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 652 (2018).