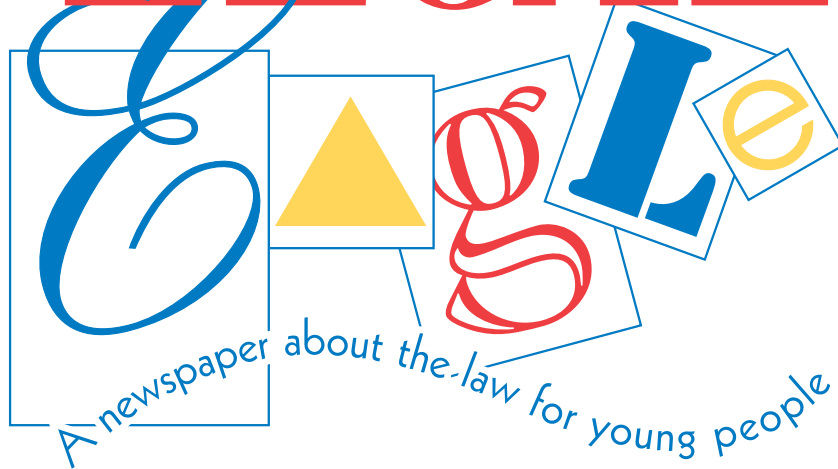


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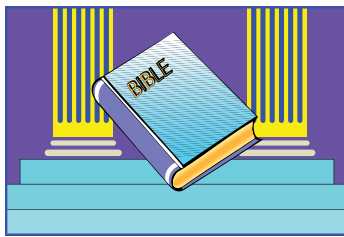


FALL 2010

Religious License Plates Challenge Separation of Church and State

by Cheryl Baisden

The debate over the separation of church and state is playing out in an unlikely place — motor vehicle license plates. Specialty license plates invoking religious messages have been proposed in South Carolina, Indiana and Tennessee with varying outcomes in the courts.



Separation of church and state

“The First Amendment to the Constitution guarantees freedom of religion, specifically for the purpose of limiting government power,” said Princeton attorney Grayson Barber, whose practice focuses on First Amendment issues. “That means the government

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The Battle Over Banning Books

by Cheryl Baisden



Probably the most common argument over school library books involves checked out volumes that were last seen in a backpack, locker or cluttered bedroom, and are now

hopelessly overdue. But every year another kind of battle over keeping books on the shelves also takes place in school libraries across the country — the often heated conflict over banning books.

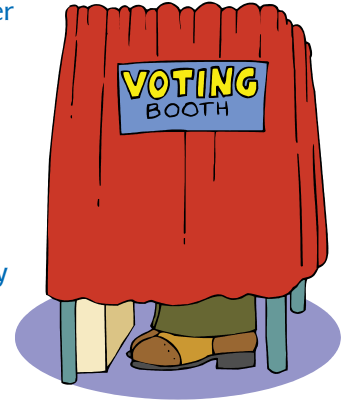
Removing books from public circulation has been used as a way

CONTINUED ON PAGE 2

Majority Rules, Right? Not Always

by Phyllis Raybin Emert

November elections are fast approaching and some voters are unhappy with the way elections work, becoming dissatisfied



with traditional **plurality** voting (winner takes all). Today, candidates no longer need a majority of votes (more than 50 percent of votes cast) to be elected. Many win even though opposition candidates accumulate more combined votes.

A study published in 2010 by FairVote and The Center for Voting and Democracy, a nonprofit, **nonpartisan** electoral reform organization, examined election results from 1982 – 2008. Called *Dubious Democracy 2008*, the study found, “in each of the four national elections between 1998 and 2004, more than 98 percent of **incumbents** won, and more than 90 percent of all races were won by non-competitive margins of more than 10 percentage points.” In 2006 and 2008, the elections’ competitiveness was slightly improved, but still 95 percent of incumbents won and 87 percent of all races were won by non-competitive margins of more than 10 percentage points. According to the study, “the end result is that most voters don’t have a real choice between two candidates, let alone three, undermining a healthy two-party system, where issues ignored by one major party can be

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Banning Books CONTINUED FROM PAGE 1

to control the information people receive for as long as writers have been putting their thoughts down on paper. Centuries ago, when each volume had to be written by hand and only a few copies of a book existed, political and religious leaders would actually burn books to keep certain ideas from reaching the general population. Once the printing press was invented in the 15th century, burning offending books became far less effective, and ordering them removed from circulation by banning them began to gain in popularity.

“Historically, books were burned, and later banned, as a way to try and control the information people received,” explained Grayson Barber, a Princeton lawyer who practices constitutional law. “Sometimes a government or a religious group would want to keep ideas from people if they went against what the government or religion believed. By preventing people from sharing different views, the belief was that you could keep people from questioning your authority.”

For example, in 1933, as Adolf Hitler and his Nazi Party were gaining power in Germany, a massive book-burning campaign took place. Twenty years later, in the United States, Senator Joseph McCarthy launched a broad book banning movement as part of his vision to purge the country of what he believed were Communist influences. More than 300 different books were branded as anti-American by McCarthy, and community and school libraries across the country moved to pull many of them from their shelves.

A constitutional freedom

In the United States, the First Amendment to the U.S. Constitution gives citizens the right to freely

publish and distribute their thoughts, even if they are in opposition to the government or popular religious or social beliefs. Violating this right is called viewpoint discrimination because the goal is to keep someone else from publicly expressing his or her point of view. Today, legal challenges to this First Amendment right usually center around who should have access to those points of

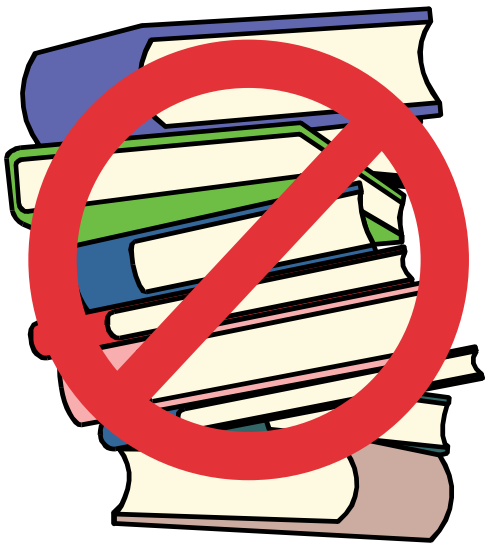


view, rather than whether someone has a right to actually *publish* them, an issue our Founding Fathers never anticipated.

“You have to remember that when the First Amendment was written they were focusing on protecting citizens from government censorship,” explained Barber. “They were focused on adding freedoms to our lives rather than restricting them. Which books should or should not be in a public or school library was the furthest thing from their minds. The way the law stands today, a book *can* be removed from a school library or be removed from a school curriculum, but only if it is found to be educationally unsuitable for certain students based on their age, for example, or is in some way obscene.”

The *Pico* decision

The landmark case (*Board of Education, Island Tree School District v. Pico*) that addressed when a book can be banned in the schools was decided by the U.S. Supreme Court in 1982, and involved a Long Island, New York, school board's decision to remove about a dozen books from the high school because officials felt they were "anti-American,



anti-Christian, anti-Semitic, and just plain filthy." A group of students, led by then 17-year-old Steven Pico, fought for their constitutional rights and won.

In its 5-4 decision, the Court ruled that "local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books." Further, the decision stated, "...students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate."

The boundaries set by the Court in 1982 are tested frequently, according to the American Library Association (ALA), which reported that more than 6,000 formal requests for book removals from libraries and schools across the country were made between 1990

and 2000. And for every formal request for a book to be removed from a library shelf, the ALA estimates as many as five additional banning incidents go unreported, with the book in question being quietly removed from the shelves without public knowledge.

The *Harry Potter* series, with its focus on wizardry and magic, viewed in some circles as anti-Christian, has been among the most challenged books in the country since the first volume was published in 1997. One of the most frequently banned children's books in U.S. history has been Mark Twain's classic novel *The Adventures of Huckleberry Finn*, because opponents view its treatment of African Americans as racist even if the characters are depicted and speaking in the **vernacular** of the time.

"In many cases the people who are pushing for a book to be banned, or quietly remove a book from the shelves, think they are doing something that is actually good for the children in a school," said Barber. "They think they are protecting them from ideas they see as bad or wrong. While a parent has a right to direct how their *own* child is brought up, under the U.S. Constitution they don't have the right to dictate how *other* children are brought up. Protecting that right is why the courts get involved."


Recent battle in Florida

A recent battle in book banning involved the Miami-Dade County School Board in Florida and the book *A Visit to Cuba*. The school board banned the book in 2006, after a parent, who was once a political prisoner in Cuba, complained it did not accurately represent life under dictator Fidel Castro. The book is part of a 24-book series for children between the ages of four and eight,

which highlights the geography, customs and daily life of different countries.

Following school policy, the book was reviewed by a local school advisory board, and was debated by a school district-wide committee. Both groups voted overwhelmingly to keep the book in the library, but the board voted to remove it anyway, based on the fact that inaccuracies existed in the book.

The American Civil Liberties Union of Florida sued the Miami-Dade County School Board, claiming what the school board did was censorship and a violation of the students' rights to "have access to the marketplace of ideas in their school library." While a federal judge ruled in favor of the ACLU, an appeals court ruled 2-1 that the Miami-Dade County School Board's actions did not infringe on freedom of speech. In November 2009, the U.S. Supreme Court declined to hear the case, letting the appeals court decision stand and allowing the Miami-Dade County School Board to remove the book from library shelves.

"It would have been interesting to see what the Supreme Court would have decided in this case, since it would have helped define what can and can't be used as a basis for banning a book," said Barber. "While the book may overlook things in Cuban life, you can find factual errors or inaccuracies in just about every book if you really look for them. A better solution, which is protected under the First Amendment, is to add books with an opposing viewpoint to the library shelves rather than remove books. This way students are exposed to both sides of an issue, and can learn to evaluate what's right for themselves." 

Majority Rules CONTINUED FROM PAGE 1

meaningfully addressed by the other.” *Dubious Democracy 2008* claims the “winner-take-all electoral system” is part of the problem.

The Founding Fathers left the specific details of elections for the individual states to decide. States, as well as some local municipalities, can determine and/or change voting methods by passing legislation.

Electoral reforms such as instant runoff voting (IRV) have been proposed and adopted in a number of cities throughout the nation. Supporters of IRV believe it improves the election process, helps voters focus on the issues, gets more people involved, saves taxpayers' money, and gives independent and third party candidates a role other than that of a spoiler.

A spoiler is usually a candidate who is not affiliated with a major party. The Republicans and the Democrats are the major parties in the United States. This “spoiler” candidate can potentially take votes away from a major party candidate, thereby giving the election to his or her opponent. For example, in the 1992 presidential election, billionaire and businessman Ross Perot, running as an independent candidate, received 19 percent of the vote. While that was a substantial amount of votes cast, political experts suggest those votes would have gone to the Republican George H.W. Bush, who received 37 percent of the vote. This allowed Democratic candidate Bill Clinton to win the election with 43 percent of the popular vote. Clinton did not receive the majority of the popular vote but was victorious in the Electoral College (which is how our president is elected).

How IRV works

Instant runoff voting (IRV) is a method whereby voters select their candidates for office in a ranked order of preference. In the voting booth, a first choice, second choice and third choice is selected by the voter in the appropriate line or column. (The amount of rankings allowed depends upon the law in that particular **jurisdiction**, but most places using IRV have opted for three choices).

Here's an example. Say Nick, Joe and Kevin are running for mayor, but none of them receive a majority of the vote. Nick receives 42 percent of the vote, Joe 38 percent and Kevin 20 percent. In

a regular election, Nick would be elected mayor despite the fact 58 percent of voters preferred someone else. In another case, there might be a runoff between the top two candidates (Nick and Joe) at a future date.

Under IRV, however, the runoff would occur instantaneously by computer. Kevin, as the lowest vote getter would be eliminated immediately as a candidate. His supporters would have their second choice votes counted and added to the remaining candidates'

totals. If Kevin's supporters split their second choice votes evenly between Nick and Joe, the new totals would be 52 percent for Nick and 48 percent for Joe, making Nick the new mayor. However, if the second choice votes went, for example, five percent for Nick and 15 percent for Joe, the new totals would be 47 percent for Nick and 53 percent for Joe, making him the new mayor with a majority of the vote.

If there are more than three candidates and more than three rankings, IRV would proceed the same way. The last place candidate receiving the fewest first place votes would be eliminated (defeated) and the ballots counted again. The second choice votes would be tallied for those who voted for the defeated candidate. If a second choice vote were also cast for a defeated candidate, the voter's third choice vote would be counted. These eliminations would continue until one of the candidates receives a clear majority of the vote.

Where in the world is IRV?

Australia, Ireland, London and other cities in the United Kingdom use IRV. American cities that use an IRV system of voting include Minneapolis, St. Paul, Memphis, San Francisco and the California towns of Berkeley, Oakland and San Leandro. A few places like Burlington, Vermont; Aspen, Colorado; Cary, North Carolina; and Pierce County, Washington have repealed IRV, claiming it is too costly and complicated.

In an article for *The New Jersey Law Journal* about the benefits of IRV in New Jersey, Professor Frank Askin of Rutgers Law School — Newark, wrote “IRV could not only save money in certain local elections; it would prohibit the election of candidates with less than a majority vote...In New Jersey, it would allow our election laws to be revised



to require election by a majority vote without requiring an expensive, runoff election.”

Professor Askin is “not aware of any New Jersey municipalities that have adopted IRV. You would need some local group to push the idea... collect local signatures, and put it up for **referendum**,” he said. He explained that third party and independent candidates could be strengthened since their supporters would have significant second choices, and candidates would have to appeal to these voters to get their second choice votes. Instead of spoilers, third party and independent candidates could be a significant part of the IRV process.

Pros and cons of IRV

Under IRV there would be a wider range of candidates because second and third choices matter. There would likely be less negative campaigning, because candidates would not want to turn off voters who might make them their second or third choices. One election could produce a majority winner, without the necessity of an expensive runoff at a later date. In the long run, taxpayer money could be saved.

On the other hand, many voters are comfortable with how we vote now. Some people are confused about the ranking system and have trouble understanding how it would work. It would cost money to purchase expensive software and change over the computers to record second and third choice votes in IRV (although it is a one-time only cost). Public re-education and redesigning new ballots would also cost money.

John Anderson, independent candidate for president in 1980, and a supporter of IRV, wrote in *The Christian Science Monitor*, “Although critics say IRV would be too complex for voters to understand, the process is as simple as deciding among friends where to go for dinner — everyone knows how to rank their preferences...For IRV to spread nationwide, states could adopt the voting method for congressional and presidential races by mere statute.” Anderson, considered a spoiler of the 1980 election, taking votes away from Democrat Jimmy Carter and helping Republican Ronald Reagan, contends, “one-third of all voters who are not registered as Republican or Democrat feel pressured to vote against their worst nightmare rather than their best hope.”

Courts support IRV

IRV has been legally challenged in Minnesota and Massachusetts. The Supreme Courts of both states rejected the arguments that IRV goes against the “one person, one vote” principle and that all votes are not equal. In April

2010, a landmark decision upheld the constitutionality of San Francisco’s IRV voting method.

U.S. Federal District Judge Richard Seaborg wrote in his decision, “San Francisco’s system satisfies the one person, one vote principle: even if voters may rank up to three choices, only one of those choices ultimately ‘counts.’ Even where a ballot is exhausted after three rounds, that vote plainly has been ‘counted.’ In effect, it is cast for a losing candidate.” Judge Seaborg concluded, “Plaintiffs [those who challenged IRV] have not persuasively shown that San Francisco’s restricted IRV voting method works an unreasonable deprivation of the franchise. While the

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Daily Doses of Democracy

Most people use a common form of instant runoff voting (IRV) in their everyday lives. For example, a group of kids are sitting around playing video games when one says, “I’m hungry. Let’s eat.”

“Fine, but not Italian. I’m on a diet this week.”

“How about Chinese?” says another. “I’m in the mood for sweet and sour shrimp.”

“No way. Pepperoni pizza with mushrooms!”

“Burgers and fries,” chimes in another.

“Enough already. Let’s vote. Top two or three choices.”

Four want Chinese food, three want pizza and there is a single vote for burgers.

“Burgers are out. What’s your next choice?”

“Chinese, of course.”

“Chinese food wins. Get the take-out menu!”

The above scene is a common one all over America. Groups of people vote together to decide what movies to go to, whose house to hang out at, and what shopping mall to visit. This particular example is a form of IRV, also called ranked choice voting or preference voting. The food choice with the least amount of votes (burgers) was eliminated. That voter’s next choice was Chinese food, giving the Chinese voters a majority and a win over pizza. IRV works the same way with candidates and voter preference in elections.

—Phyllis Raybin Emert



Majority Rules CONTINUED FROM PAGE 5

three-rank limitation does exert some burden on voting rights, it is not severe. Defendants, for their part, have adequately introduced important government interests that are well-served by the limitation...The plaintiffs' motion...must be denied."

Electoral reform on the West Coast

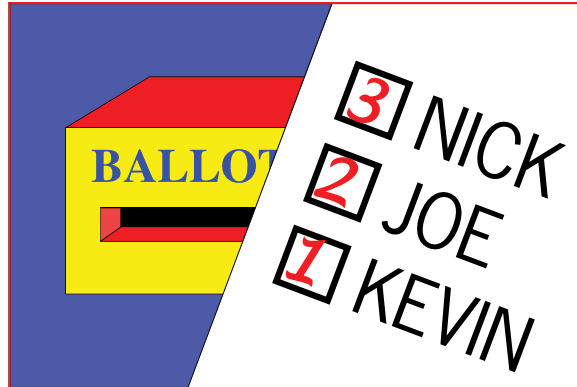
In June 2010, California approved Proposition 14, which was passed with 54 percent of votes cast. Proposition 14 established a "top two" primary system in California for all congressional, state, and federal offices. According to the ballot, Proposition 14, which is not the same as IRV, "Allows all voters to choose any candidate regardless of the candidate's or voter's political party preference. Ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference." Proposition 14 does not apply to presidential primaries.

California's new system is modeled after the Top Two primary that has been used in the state of Washington since 2008 with a key difference. In Washington's primary, write-in votes are allowed. In California's new primary system, write-ins will not be allowed. In 2008, voters in Oregon rejected a similar Top Two measure, while a bill was passed in Louisiana in 2010 to include congressional elections as Top Two primaries.

Nuts and bolts of top two

Effective January 1, 2011, the Top Two ballot in California will list all candidates running for Congressional and state offices. Every ballot will be the same regardless of party preference. The candidates can decide whether to have their party affiliation listed if they think

it will help them. Although political parties can support or oppose candidates, they are prohibited from nominating a specific candidate. The



top two candidates with the most votes in the primary advance to the general election in November. The top two can be two Republicans, two Democrats, two Green party members, one of each, or candidates not affiliated with a party. The only thing that matters is who the top two vote getters are, since they advance to the general election and only one is elected.

Without party primaries, in which the more extreme and loyal party members take part, supporters of Top Two believe that moderate candidates would have a better chance of getting elected and getting things done. The candidates would have to reduce partisanship and appeal to all the voters, not just to voters in the party bases. Voters would have more choices in the primary, but the choices would be reduced to only two in the November general election.

Critics of Top Two believe there is too much time between the primary and the general election (five months), and that it will be difficult for independent and minor political parties to advance against better financed and more popular candidates.

Professor Askin said, "There are problems with California's Top Two

primaries. You could wind up with 15 candidates competing for office and the top two finishers receiving 12 percent of the vote each and then having a runoff. In such races, it would make wealthy self-financed candidates that much more dominant." He concluded, "I think IRV is a much better solution if your aim is to find the candidates with the widest popular support."

Neither the Democrats nor the Republicans were happy with the passage of Proposition 14 and according to *The New York Times*, both major parties will attempt to stop its implementation before its scheduled start in 2011.

Electing the president

Whether a municipality or state uses Top Two or IRV in local and state elections, neither is currently used in presidential elections. The election of the United States president is still decided by the Electoral College.

In an editorial published in *The Sacramento Bee*, Blair Bobier, former deputy director of the Political Reform Program at New America Foundation, a non-profit, non-partisan public policy institute located in Washington, DC, wrote, "using Instant Runoff Voting to elect our president, as the Republic of Ireland does, would encourage consideration of a diversity of candidates, allow for substantive debate and ensure that our national leader has the broadest support possible."

How IRV would be administered nationally, in conjunction with the Electoral College, are details that still need to be determined. Whether IRV or Top Two primaries are effective and popular remains to be seen, and these electoral reforms will be observed closely in the coming months and years. 🗳️

License Plates CONTINUED FROM PAGE 1

cannot tell people what to believe or how to worship. The government has to be neutral.”

Without the First Amendment, the government could establish a national religion and **persecute** anyone who didn't practice it, Barber explained. But since the First Amendment really only says what the government can't do, and not what it can do, its exact meaning is still being debated today. One side believes the amendment means the government can't *limit* religion but can still play a part in religious matters. The other side believes the government can't have *any* involvement with religion.

Giving religion license in South Carolina

In South Carolina, where the Division of Motor Vehicles offers drivers about 200 different choices of specialty license plates, state legislators proposed a new plate with a stained-glass window and cross, emblazoned with the words “I Believe.” Critics said the license plate was a clear violation of the First Amendment — an illegal endorsement of religion — and in June 2008, Americans United for Separation of Church and State, a nonprofit, educational organization based in Washington, DC, filed a lawsuit against the state on behalf of three pastors, a rabbi, the Hindu American Foundation and the American-Arab Anti-Discrimination Committee. The basis of their argument, according to Rev. Barry Lynn, executive director of Americans United, is that the license plate was proposed and designed by elected officials, instead of by an independent group, so the plates represent a clear religious endorsement by the state.

In Associated Press reports, South Carolina Lieutenant Governor Andre Bauer stated, “A lot of people can't understand what the hype is about. Nobody is mandated to have this tag...It's an option.” Bauer reportedly offered to advance the state the money needed to begin production of the plates rather than wait until at least 400 prepaid orders had been received, as required by state law.

A federal court, in November 2009, ruled that the license plate is unconstitutional and ordered state officials to stop producing it. According to Americans United, the court's reasoning was that the **statute** allowing for the production of the license plate “was motivated by a purpose to endorse religion in general, had the primary effect of advancing religion and fostered an excessive government entanglement with religion.”

In August 2010, South Carolina Attorney General Henry McMaster declared a similar plate designed by a nonprofit group legal. The new plate, which is currently under review by

the state's Department of Motor Vehicles, depicts a sunrise and on the left three crosses representing the site where Jesus was crucified. On the top of the plate is the group's website address, “IBELIEVEsc.net.”

“It is our opinion that the establishment clause would not be violated by approval of the plate,” McMaster said in Associated Press reports. “Indeed, it is our opinion that denial would infringe upon the free speech clause of the First Amendment.”

Because a private group not sanctioned by the government designed the plate, Rev. Lynn of Americans United stated in Associated Press reports that he would have no problem with the proposed tags, although the inclusion of the website, he said, may be problematic.

Indiana trusts in God

Around the same time of the South Carolina ruling, the state of Indiana won



In an Americans United press release, Rev. Lynn noted that Bauer's financial offer “more deeply confirms this is a government-sponsored program.” The lawsuit also claimed that the way the plates were authorized violates motorists' freedom of speech. Other religions will not be able to get similar license plates expressing differing viewpoints, nor can a comparable “I Don't Believe” license plate be issued. “The state has made believers of non-Christian faiths feel that they are second-class citizens,” Rev. Lynn stated in the press release. “Under our Constitution, that's impermissible.”

CONTINUED ON PAGE 8

the right to continue producing its religion-inspired license plates. Introduced in January 2007 by the state Legislature at the suggestion of private individuals, as a design “both patriots and those of faith” would be drawn to, the plates include the words “In God We Trust” and an American flag. A few months after production began, the American Civil Liberties Union (ACLU) filed a lawsuit on behalf of Indiana motorist Mark Studler, who argued it was unfair that he had to pay a \$15 administration fee for a specialty license plate that supported environmental issues but drivers requesting the religious plate paid nothing extra.

The state argued that unlike its other specialty plates, the new design was developed as an alternate to the state’s standard plate, so a fee was not required. After reviewing the state’s policies, the Indiana Court of Appeals agreed.

“It’s on our currency. We mention God in the Declaration of Independence,” said Curt Smith, president of the Indiana Family Institute, a faith-based organization. “I think the lawsuit is more than misguided. I think it shows that they’re hostile to any expression of the divine.”

Ken Falk, legal director for the ACLU of Indiana, told *The Los Angeles Times*, “The issue isn’t the message. It’s about making sure that nearly every other plate that carried a message has a cost attached to it, and this does not. In a state that’s as religious as Indiana, the phrase ‘In God We Trust’ is not just about supporting the national motto. It’s about saying you believe in God.”

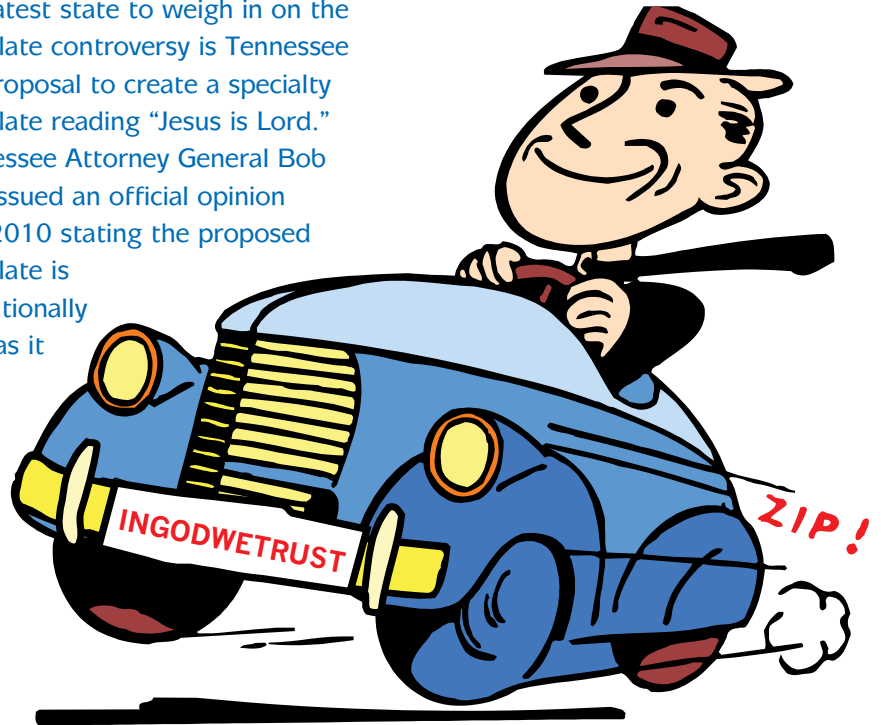
Tennessee weighs in

The latest state to weigh in on the license plate controversy is Tennessee with a proposal to create a specialty license plate reading “Jesus is Lord.”

Tennessee Attorney General Bob Cooper issued an official opinion in April 2010 stating the proposed license plate is “constitutionally suspect as it

differentiates among religious doctrines and only specially recognizes one religious creed.” Cooper’s opinion goes on to state, “we think a court would find that a reasonable observer would believe that the dissemination of this government message on this specialty earmarked license plate is a government endorsement of this particular religious creed.”

While a final verdict in these types of cases is always up to the courts, Barber believes these cases appear to cross the line when it comes to the separation of church and state. Under the First Amendment, “people are free to festoon their cars with bumper stickers and magnets that express their religious beliefs,” Barber said. “There is no reason for the government to put another religious message on license plates.”



incumbent — someone who holds an official office.

jurisdiction — authority to interpret or apply the law.

nonpartisan — not adhering to any established political group or party.

persecute — to cruelly harass a person or group.

plurality — having a greater number (as in votes), but not a majority.

referendum — popular vote on a measure submitted by a legislative body.

statute — a particular law established by a legislative branch of government and signed by the president or governor.

vernacular — common daily speech.