

From: Valenta, Val
To: 'Emory Smith' <AGESMITH@ag.state.sc.us>
Butch Bowers <Butch.Bowers@nelsonmullins.com>
CC: Kevin A. Hall <kevin.hall@nelsonmullins.com>
Thad Westbrook <thad.westbrook@nelsonmullins.com>
Todd Carroll <Todd.Carroll@nelsonmullins.com>
Earley, Jr., Jimmy E. <Jimmy.Earley@SCDMV.net>
Adams, Marcia S <Marcia.Adams@SCDMV.net>
Devlin, Lotte <Lotte.Devlin@SCDMV.net>
Date: 7/30/2008 6:00:14 PM
Subject: RE: Draft Answer in Summers v. Adams 3:08-2265-CMC ATTORNEY CLIENT PRIVILEGED

Butch,

Here are my comments.

Paragraph 31 probably should stay this way. We know that our costs for plate production will be highly scrutinized, so we are being careful about our projections I could give you an estimate, but it is better left vague for now. Note that this will be to cover costs only; it will NOT be a revenue-generating statute.

Paragraph 32 states that a fee has not been set, yet, which is true. However, there is not much way to deny the truth of the statement that it will be significantly cheaper than other plates.

Paragraph 33 probably should not claim that we do not have information; the plate will not be marketed in the same way that Sertoma markets its plate to its member. This plate will be shown on or website and displayed in offices, but it will all constitute passive advertisement.

Val

Frank L. 'Val' Valenta, Jr.
General Counsel
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Post Office Box 1498
Blythewood, South Carolina 29016-0020
803.896.9902
Fax: 803.896.9901
Val.Valenta@scdmv.net

-----Original Message-----

From: Emory Smith [mailto:AGESMITH@ag.state.sc.us]
Sent: Wednesday, July 30, 2008 5:23 PM
To: Butch Bowers; val.valenta@scdmv.net
Cc: Kevin A. Hall; Thad Westbrook; Todd Carroll
Subject: Re: Draft Answer in Summers v. Adams 3:08-2265-CMC ATTORNEY CLIENT PRIVILEGED

I have these questions and suggestions:

1. RE paragraph 6 of the Answer responding to paragraph 5 of the Complaint, should you add a denial of any intent to act inconsistently with the United States Constitution? This addition would be to respond to the allegation in the first sentence that legislators have been acting to promote religion.

2. Re paragraph 10 of the Answer responding to Paragraphs 9, 10, 11, 12, and 13 of the Complaint, should you add a denial of all conclusions

set forth in the objections to the approval of the plate and the production and issuance of the plate? These paragraphs set forth allegations such as preferential treatment to Christians.

3. Re para. 12 of the Answer responding to para. 16 of the complaint, should you add something re the first sentence re 350 plates?

4. Re para 28 of the Answer responding to para 32 of the Complaint, is it correct to allege that a cross is potentially symbolic of "many" things? Should this para be rephrased?

5. Re paras 31, 32 & 34 of the Answer addressing paras 35, 36, and 38 of the Complaint, does DMV have knowledge about those matters such that these answers should be modified?

6. Re para 35 of the Answer addressing para 39 of the complaint, should the reference to lobbying be changed to "request that legislature pass authorizing legislation."

7. The Answer denies all allegations that the plate represents govt, private or hybrid speech. Can we deny all such allegations at this point instead of alleging that the plate constitutes one of these types of speech?

8. Re para 52 of the Answer, I haven't gone back and checked old research, but can the Eleventh Amendment be raised as a defense to an action seeking only declaratory and injunctive relief?

Thanks.

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>>> "Butch Bowers" <Butch.Bowers@nelsonmullins.com> 7/30/2008 2:02 PM
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Val and Emory:

I hope both of you are doing well. As you know, we have a responsive pleading due in the I Believe license plate case on Monday, August 4, so

attached for your review and comment is a draft answer, along with a copy of the complaint. Please take a close look and let us know if you

see any glaring omissions or any information you would like for us to add.

Emory - as you will see, we did not include the Department of Corrections in this draft, but we will revise the answer so that is from

both the DOC and the DMV if that is your preference. Just let us know how you would like us to handle that, and we'll take care of it, including adding your name and office to the signature block on behalf of DOC. If you do want us to file an answer jointly on behalf of both defendants, also please let me know if there are any additional defenses

that you want us to plead that may be unique to the DOC.

Val - as you will see, we state in Paragraph 32 that the fee for the I Believe license plate has not yet been established. Our understanding is

that Gov. Sanford directed the DMV to charge the lowest rate possible for the plates (\$24), but I don't know if that's the actual policy or

if
the DMV can charge a higher fee (we think strategically it's much
better
for us if the DMV charges a higher rate so that we can reasonably
argue
that it's a revenue-generating statute). Please confirm the accuracy
of
this response for us, and if it needs to be changed please let us know
what the right answer is.
As you may recall, the complaint is full of long explanations of the
law
regarding how specialty license plates come into being, etc. In
response
to these lengthy allegations, our stock response is that we crave
reference to the authorities that they cite and, to the extent their
allegations are inconsistent with the cited authorities, we deny them.
That seems like a much easier way to respond than by trying to
re-write
the law on each and every point, but if you have any other ideas on
this
point, please let us know.
Also, please pay attention to the allegations that we claim not to
have
knowledge of. Those include 1) the contents of Gov. Sanford's letter
to
the General Assembly, 2) Andre Bauer's pledge to pay \$4000 to being
production of the plates, and 3) whether certain license plates were
created by the legislature without any input from private parties at
all. Please let us know if these responses need to be changed.
Finally, if you can think of any defenses that aren't raised here,
please let us know. Thanks very much and we look forward to working
with y'all on this. Let us know if you have any questions.
Butch

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