

SUPREME COURT OF OREGON

In the Matter of the Denial of the Application for the Custom Plates
"Wine" "Invino" "Vino" of Michael Paul Higgins v. Driver and
Motor Vehicle Services Branch (DMV), 335 Or. 481

72 P.3d 628 (2003) · No. 60486; CA A96871; SC S48149 · Decided July 3, 2003

SUMMARY

The Oregon Supreme Court affirmed the denial of Michael Paul Higgins's applications for customized vehicle registration plates displaying “WINE,” “INVINO,” and “VINO.” The court held that displaying a state-created registration plate for vehicle-identification purposes is not the vehicle owner's constitutionally protected speech under Article I, section 8, of the Oregon Constitution. It also concluded that the DMV's restriction on alcohol-related custom plate messages was permissible under the First Amendment as applied to a nonpublic forum.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Durham, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Riggs, Justice; Balmer, Justice
JURISDICTION	Oregon
DECIDED	July 3, 2003
DOCKET	60486; CA A96871; SC S48149
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of an Oregon Court of Appeals decision affirming an administrative law judge's final order, issued on behalf of the Oregon Department of Transportation's Driver and Motor Vehicle Services Branch, denying petitioner's applications for customized vehicle registration plates.
STANDARD OF REVIEW	Judicial review of an agency final order; the court independently determined the constitutional validity of the administrative rule and applied the governing Oregon free-expression and federal First Amendment principles.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential

PARTIES

Michael Paul Higgins v. Driver and Motor Vehicle Services Branch (DMV)

TOPICS

free speech

first amendment

administrative law

judicial review of agency action

appellate procedure

PRACTICE AREAS

constitutional law

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether DMV's administrative rule prohibiting customized registration-plate configurations that refer to alcoholic beverages violated Article I, section 8, of the Oregon Constitution.
2. Whether DMV's restriction on customized registration-plate messages violated the First Amendment to the United States Constitution.

HOLDINGS

1. The rule did not violate Article I, section 8, because the compelled display of a government-created vehicle-identification message on a registration plate is not the vehicle owner's constitutionally protected speech, writing, or printing.
2. The DMV rule was a permissible restriction under the First Amendment because customized registration plates constitute a nonpublic forum and the restriction was reasonable in light of the forum's purposes and viewpoint neutral.

KEY QUOTATIONS

"Those cases, and others that we have not cited, address the constitutionality of legal restraints on a person's own expressive activity, not, as here, the legally compelled display of a message that government creates for a regulatory purpose unrelated to the suppression of speech." (at 633)

"It remains a government-controlled device that carries a government-approved identification message that vehicle owners must display on their vehicle for regulatory purposes unrelated to the suppression of speech." (at 634)

"We find nothing in the text or history of Article I, section 8, that entitles petitioner to compel DMV to manufacture a customized registration plate that conveys a message that falls outside the scope of the messages that DMV was willing to use in its vehicle regulatory scheme." (at 634)

FACTUAL BACKGROUND

Higgins applied for customized Oregon registration plates displaying the characters "INVINO," "VINO," and "WINE." DMV denied the applications because the requested configurations referred to alcoholic beverages under its administrative rule governing customized plates. Oregon law requires vehicle owners to display state-issued registration plates, and DMV controls their manufacture, assignment, and permissible configurations.

PROCEDURAL HISTORY

DMV denied Higgins's applications for customized plates reading "INVINO," "VINO," and "WINE" under an administrative rule barring drug-related words and later reissued its final order under an amended rule prohibiting references to alcoholic beverages and controlled substances. On judicial review, a divided en banc Oregon Court of Appeals affirmed the agency order. The Oregon Supreme Court granted review and affirmed both the Court of Appeals decision and the DMV order.

DISPOSITION

affirmed

CASES CITED

- Higgins v. DMV, 170 Or. App. 542, 13 P.3d 531 (2000)
- State v. Robertson, 293 Or. 402, 649 P.2d 569 (1982)
- Burt v. Blumenauer, 299 Or. 55, 699 P.2d 168 (1985)
- City of Eugene v. Miller, 318 Or. 480, 871 P.2d 454 (1994)
- City of Hillsboro v. Purcell, 306 Or. 547, 761 P.2d 510 (1988)
- City of Portland v. Tidyman, 306 Or. 174, 759 P.2d 242 (1988)
- Arkansas Educational Television Commission v. Forbes, 523 U.S. 666, 118 S. Ct. 1633, 140 L. Ed. 2d 875 (1998)