

Lauren E. Ellisberg (2009)

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Writing Sample

The attached writing sample is a section of the appellate brief I originally wrote for the 2009 New York Law School Froessel Moot Court Competition.

The argument presented is in support of the Respondent, the State of Froessel. The section argues that a statute of the state's traffic law, which bans organizations with members who are non-United States citizens from creating a specialty license plate, is not in violation of the equal protection clause of the Fourteenth Amendment, and thus withstands constitutional scrutiny.

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Writing Sample

II. FTL § 2(d) DOES NOT UNCONSTITUTIONALLY DEPRIVE NEVEED ALI OF EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT BECAUSE IT DOES NOT TARGET A SUSPECT CLASS OR BURDEN A FUNDAMENTAL RIGHT; FTL § 2(d) IS CONSTITUTIONAL UNDER ANY STANDARD OF REVIEW.

FTL § 2(d) prohibits the issuance of a specialty license plate to any applicant group that represents the interests of those who are not U.S. citizens. FTL § 2(d) withstands constitutional scrutiny under the Fourteenth Amendment, as it does not target a suspect class, or burden a fundamental right. See U.S. Const. amend XIV, § 1. Accordingly, the proper standard for review of FTL § 2(d) is a rational basis review. Should the court hold that FTL § 2(d) targets a suspect class or infringes upon a fundamental right, and applies strict scrutiny, FTL § 2(d) would survive such an analysis as the statute is both necessary to achieve a compelling state interest and narrowly tailored to achieve that result.

A. FTL § 2(d) is Subject to a Rational Basis Review Because it does not Target a Suspect Class or Burden a Fundamental Right.

FTL § 2(d) neither targets a suspect class, nor burdens a fundamental right, and therefore should only be subject to a rational basis of review. Froessel, 75 Misc.5d 1984. This court has recognized a State's power to exclude non-United States citizens as part of the "sovereign's obligation to preserve the

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basic conception of a political community;" and when a State acts thusly by classifying against aliens, "its action is not subject to strict scrutiny but rather need only meet the rational basis test." Foley v. Connelie, 435 U.S. 291, 295 (1978) (finding a statute constitutional which provided that no person could be appointed to the state police force unless a U.S. citizen).

The first step in determining whether FTL § 2(d) violates the Equal Protection Clause is to identify the proper standard of review the classification made by the statute. Dunn v. Blumstein, 405 U.S. 330, 335 (1972). If a challenged law either burdens a fundamental right or targets a suspect class, strict scrutiny is the required standard of review. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) ("Rodriguez"). However, a mere disproportionate impact on a particular class does not trigger strict scrutiny. See Washington v. Davis, 426 U.S. 229, 241 (1976).

Rational basis reviewing the context of equal protection "does not authorize the judiciary to sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." Heller v. Doe, 509 U.S. 312 (U.S. 1993). A challenged law must be upheld if the court

is satisfied that it is rationally related to a legitimate state interest. Heller at 319-320.

Consequently, FTL § 2(d) should be subject to a rational basis review. Nonetheless, even if this court should find that FTL § 2(d) is subject to strict scrutiny, the statute would satisfy such a review. Therefore, FTL § 2(d) should be upheld as it does not deprive aliens of equal protection of the laws under the Fourteenth Amendment.

1. FTL § 2(d) does not target Ali as a suspect class because the law is applied equally to citizens and non-citizens alike.

FTL § 2(d) does not explicitly or implicitly discriminate against any group of persons. This statute ensures that those who do not share the interests of the State do not thwart the function of the specialty license plate program, which is to raise funds for the community and its charitable organizations.

i. FTL § 2(d) does not create a facial suspect classification.

FTL § 2(d) is facially neutral. A law can target a suspect class facially or, if facially neutral, by a showing that its application has a discriminatory effect on a particular class of citizens and that it was the purpose of the law to produce this discrimination. See e.g., Yick Wo v. Hopkins, 118 U.S. 356 (1886); Romer v. Evans, 517 U.S. 620 (1996). Here, however, the language of the statute does not target a suspect class, and applies equally to all participants. The sale of specialty

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license plates was intended to advance local community interests, and it is reasonable to deny those groups whose interests lie outside of the community the ability to purchase these plates. See Froessel, 75 Misc.5d 1984 (D. Froes. 2009). Plaintiff relies upon language in previous decisions that “classifications based on alienage are inherently suspect.” Oyama v. California, 332 U.S. 633 (1948); Graham v. Richardson, 403 U.S. 365 (1971). However, FTL § 2(d) does not prohibit non-United States citizens from obtaining specialty license plates solely because they are non-U.S. Citizens. Rather, the statute ensures that those who do not represent the interests of the State do not undermine the central purpose of the specialty license plate program, which is to provide the State with charitable funds from local organizations that have been approved by the Commission. Froessel, 127 F.5d 54, 19. The Thirteenth Circuit correctly held that “those in the state of Froessel who seek to obtain specialty license plates and are affected by the distinction drawn by FTL § 2(d) suffer, at worst, only an inconvenience.” Id. at 20. FTL § 2(d) does not preclude charitable organizations from seeking other fundraising or advocacy avenues, and therefore does not impinge on the individual interests affected by the classification.

ii. FTL § 2(d) does not have a discriminatory effect, and does not have the purpose of discriminating against a suspect class.

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Petitioner has failed to show that the law's effect on the "suspect class" is discriminatory and that the law has the purpose of discriminating against the suspect class. See Washington v. Davis, 426 U.S. 229. In order for a law to be struck down on the basis of discriminatory motive, a court must be able to point to some identifiable form of discriminatory purpose to justify its conclusion. Arlington Heights v. Met. Hous. Corp., 429 U.S. 252, 265-8 (1977). Here, the lower courts properly found that "the language of FTL § 2(d) reveals no overt intent to discriminate against any particular class of citizens." Froessel, 75 Misc.5d 1984, 10.

Notwithstanding, Petitioner argues that the language of the Commissioner's first two rejection letters demonstrates that the statute is discriminatory in purpose and effect. In so doing, petitioner fails to recognize that the language used by the Commissioner is due to a compelling state interest to carefully scrutinize organizations that attempt to obtain a specialty plate. The Commissioner was well within her authority to reject Ali's application based on FTL § 2(d) at any time. Hence, FTL § 2(d) is not explicitly or implicitly discriminatory.

It may appear that courts overwhelmingly disfavor "flat bans" when they relate only to a state's economic interest. Cabell v. Chavez-Salido, 454 U.S. 432, 439 (1982). FTL § 2(d) protects the ideals and interests of the community as well. FTL

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§ 2(d) does not prohibit non-United States citizens from purchasing a specialty plate. The purpose of the statute is to “[ensure] that the charitable purpose behind the specialty license plate program is not diluted by groups who may divert funds away from the community...” Froessel, 127 F.5d 54, 19. This restriction affects group made up of citizens and non-citizens alike. Id.

2. FTL § 2(d) does not burden a fundamental right.

FTL § 2(d) prohibits the creation of a specialty license plate by a charitable organization that represents the interests of non-U.S. Citizens. FTL § 2(d) does not ban an organization from fundraising all together, it merely curtails this one avenue of revenue. This court has recognized several fundamental rights, such as education and freedom from discrimination based on race. Yet, being denied participation in one avenue of fundraising and advocacy does not rise to the fundamental level that the court has recognized in previous decisions. Although Ali is inconvenienced, no fundamental rights are being burdened.

Petitioner fails to establish that the right to create a specialty plate is a fundamental right. All legal restrictions, which curtail the civil rights of a single group, are immediately suspect. Korematsu v. U.S., 323 U.S. 214 (1994) (holding that imprisonment based on racial classifications are burdening a fundamental right). However, FTL § 2(d) does not

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curtail the civil rights of Ali in any way. The State of Froessel still allows Ali to display support or fundraise for his organization through other means. Ali may choose to sell bumper stickers or clothes in the community, where the entire profit is collected by the organization instead of half going to the state.

This court's prior decisions show that participation in the specialty license plate program does not rise to the level of a fundamental right. Consequently, FTL § 2(d) does not burden a fundamental right, and should not be subject to strict scrutiny.

B. Even if this Court Finds FTL § 2(d) Should Be Analyzed Under Strict Scrutiny Review, Froessel has a Legitimate and Substantial Interest in Protecting its Economic and Community Interests; FTL § 2(d) is Necessary and Precisely Drawn to Achieve the State's Interest.

The Thirteenth Circuit's decision must be affirmed because FTL § 2(d) does not target a suspect class or burden a fundamental right, and therefore should be analyzed under a rational basis review. Nevertheless, should this Court decide that the statute is subject to strict scrutiny review, FTL § 2(d) is related to a legitimate and substantial state interest, and is narrowly tailored to achieve that interest.

Under this heightened scrutiny, the State bears the burden of showing that: (1) the law's purpose addresses a compelling state interest and (2) that the law is narrowly tailored. See Burson v. Freeman, 504 U.S. 191, 198 (1992) (plurality opinion).

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A law is narrowly tailored when it uses the least restrictive means available for achieving the compelling purpose. Id.

1. FTL § 2(d) addresses a compelling and legitimate state interest because the State of Froessel has a legitimate interest in ensuring the specialty license plate program advances community interests.

The sale of specialty license plates is intended to advance local community interests, and it is a compelling and legitimate state interest to prohibit those groups whose interests lie outside of the community to reap the benefits of the program. The Thirteenth Circuit, in joining the Fifth and Sixth Circuits, correctly found that "states have the authority to make rational distinctions in regulations that remedy existing or anticipated problems in a statutory scheme." Froessel, 127 F.5d 54; LeClerc v. Webb, 419 F.3d 405 (5th Cir. 2005) ("LeClerc"); League of United Latin Am. Citizens v. Bredesen, 500 F.3d 523 (6th Cir. 2007) ("LULAC"). These opinions are relatively new, yet tend to show that the courts are moving towards recognizing a state's ability to regulate non-citizens from participation in its community.

The court in LeClerc held that the State's prohibition of non-immigrant aliens applying for the Louisiana State Bar did not violate the Equal Protection Clause because its classification bore a rational relationship to Louisiana's legitimate and substantial state interest in regulating the

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practice of those it admits to its bar. LeClerc, 419 F.3d 405. Although participation in a specialty license plate program and admittance to the bar are dissimilar community activities, the bases for regulating participation are similar. LeClerc recognized that a State's interest in ensuring that those who will one day practice law in the state of Louisiana represent the interests of Louisiana. Similarly, Froessel wants to ensure that those organizations that purchase a specialty plate and display it openly in the community will represent the interests of its community.

Additionally, in LULAC, lawful temporary resident aliens attempted to challenge a statute that required proof that they were United States citizens. The court found that Plaintiffs failed to show that the challenged classification was not rationally related to a legitimate government purpose, and that “[t]he State’s discrimination was rationally related to its legitimate interest in not vouching for the identities of aliens who have been permitted by the federal government to stay, but have yet to attain permanent residency.” LULAC, 500 F.3d 523. The State of Froessel has an equally compelling interest in not allowing non-U.S. Citizens to obtain a specialty plate that could advocate for interests that are not shared by the community. As discussed in Point I, the government is held responsible for the message contained on the specialty plates.

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Thus, in the absence of FTL § 2(d), the state of Froessel would be required to vouch for the interests of those outside of the community.

Petitioners incorrectly assume that there is “no parallel between the issuance of specialty license plates and preserving the integrity of state institutions...” and that issuing a specialty license plate to non-U.S. Citizens does not relate to an “identifiable and justifiable concern.” Froessel, 75 Misc.5d 1984; Froessel, 127 F.5d 54. However, the requirements imposed by FTL § 2(d) are directly related to the State’s legitimate interest of ensuring that the proceeds from the specialty license plate program are used exclusively for local community charitable purposes. FTL § 2(c)(2) explicitly states, “The remainder of the funds must be used for the applicant group’s charitable work in the community.” This gives further evidence that the Froessel legislature intended that the purpose of the specialty license plate program is to raise funds for the community of Froessel and its charitable organizations. FTL § 2(d) is fundamental to the protection of those interests.

For the foregoing reasons FTD § 2(d) would satisfy the burden to show a compelling state interest under strict scrutiny review.

2. FTL § 2(d) is necessary and precisely drawn to achieve the State’s interest.

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FTL § 2(d) uses the least restrictive means to achieve its goal of ensuring that funds from the specialty license plate program are contained within the community. Courts have held that the means the State employs must be precisely drawn in light of the acknowledged purpose. Sugarman v. Dougall, 413 U.S. 634, 642-643 (U.S. 1973). However, the courts have recognized a "State's interest in establishing its own form of government," and a "State's broad power to define its political community." Dunn v. Blumstein, 405 U.S. at 344 (1972).

FTL § 2(d) prohibits those charitable organizations that represent the interests of non-U.S. Citizens from participating in the specialty license plate program. This application requirement is necessary to further the purpose of the program, which is to keep the funds raised within the community. FTL § 2(d) serves substantial governmental, economic, and moral ideals. Non-U.S. Citizens may raise money for their organizations by many other means. Hence, it is narrowly tailored.

The language in FTL § 2(d) protects the economic and political interests of Froessel by ensuring that the community's interests are the only ones represented in the specialty plate program. To change the language of FTL § 2(d) would be to allow those outside the community or holding non-community ideals to take advantage of the program. Because the language of FTL §

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2(d) is specifically tailored to prohibit that scenario from happening, it should satisfy strict scrutiny review.