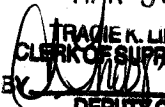


IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
DEPARTMENT OF MOTOR VEHICLES,
Appellant,
vs.
WILLIAM JUNGЕ,
Respondent.

No. 49350

FILED

MAR 30 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

RESPONSE TO MARCH 3, 2009, ORDER TO SHOW CAUSE

Note: Response begins on page 3 of this document, after motion filed on 3/20/09. The motion has been addressed and granted.

2009 MAR 18 PM 3: 7

ORIGINAL

1 Allen Lichtenstein
Nevada Bar No. 003992
2 Margaret A. McLetchie
Nevada Bar No. 10931
3 Judy Carol Cox
Nevada Bar No. 11093
4 732 South Sixth Street, Ste 200A
Las Vegas, NV 89101
5 702-366-1902

6 Lee Rowland
Nevada Bar No. 10209
7 1325 Airmotive Way, Ste. 202
Reno, Nevada 89502
8 775-786-1022

9 *Attorneys for Amicus Curiae*

FILED

MAR 20 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

11 **IN THE SUPREME COURT OF**
12 **THE STATE OF NEVADA**

13 STATE OF NEVADA, DEPT. OF MOTOR
14 VEHICLES

Appellant,

15 vs.

16 WILLIAM JUNGE,

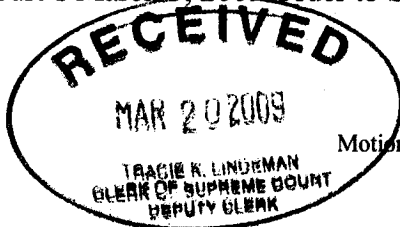
Respondent

Case No.: 49350

**Motion for Leave to Allow Amicus ACLU
of Nevada to File A Response to This
Court's March 3, 2009 Order to Show
Cause; and Response to Show Cause
Order**

18 **MOTION FOR LEAVE TO ALLOW AMICUS ACLU OF NEVADA TO FILE A**
19 **RESPONSE TO THIS COURT'S MARCH 3, 2009 ORDER TO SHOW CAUSE**

20 Pursuant to Rules 2 and 7 of the Nevada Rules of Appellate Procedure, Amicus Curiae
21 the American Civil Liberties Union of Nevada (ACLUN) hereby files: (1) its motion for leave to
22 file a Response to this Court's March 3, 2009 Order to Show Cause; and (2) its Response to this
23 Court's March 3, 2009 Order to Show Cause.



Motion for Leave to Respond to Order to Show Cause

09-07108

1 On June 13, 2008, this Court issued an order inviting the ACLUN to participate as
2 Amicus Curiae in order to examine, *inter alia*, the constitutional free speech issues raised in this
3 case. The ALCUN filed its brief on September 19, 2008, and Appellant State of Nevada filed a
4 response brief on December 26, 2008.

5 On March 3, 2009, this Court issued an Order to Show Cause directing the Appellant
6 State of Nevada, Department of Motor Vehicles (DMV) to advise the Court: (1) whether the
7 license plate at issue in this matter is currently registered to respondent William Junge; and (2)
8 if it is no longer registered to Mr. Junge, why this appeal should not be dismissed as moot.

9 Rule 27 of the Nevada Rules of Appellate Procedure govern the filing of motions, and
10 does not prohibit amicus curia from filing motions or responding to substantive motions or
11 orders once authorized to participate in an appeal. In an abundance of caution, and in the
12 absence of any language specifically authorizing amicus curia to file motions or responses to
13 orders to show cause, the ACLUN seeks an order authorizing it to file a response to the March
14 3, 2009 Order to Show Cause. Rule 2 allows this Court to suspend the provisions of any
15 Appellate Procedure Rule for good cause. Here, good cause exists to permit ACLUN to file a
16 response to the Court's March 3, 2009 Order to Show Cause due to the important constitutional
17 issues raised by this case and the fact that Respondent is no longer represented by counsel and is
18 unable to brief the Court on these issues.

19 By accepting this Court's invitation to participate as amicus curiae, the ACLUN, in
20 essence, is standing in as counsel for Respondent and is the only party able to challenge
21 Appellant's legal arguments and offer an opposing analysis of the law. At this point, the
22 ACLUN's participation is especially important because, as discussed in the Response that
23
24

1 follows, Appellant DMV has formally listed Mr. Junge's "HOE" personalized license plate as a
2 "not suitable" personalized plate, and has made it unavailable solely on that basis.

3 The Court's March 3, 2009 Order to Show Cause seeks argument from Appellant as to
4 why this appeal should not be dismissed as moot. The ACLU of Nevada is seeking to file a
5 response in order to provide this Court with a balanced analysis and thorough examination of
6 these issues, including an explanation as to why the instant appeal is not in any way moot. This
7 Court has the power, under Rule 2 of the Nevada Rules of Appellate Procedure to permit amicus
8 curiae to file a reply brief, and the ACLU of Nevada respectfully requests that it do so.

9 The ACLUN's response to this Court's March 3, 2009 Order to Show Cause follows this
10 motion, and is filed conditioned upon this Court's grant of its foregoing motion for leave.

11
12 Respectfully submitted this 18th day of March, 2009

13 By: 

14 Judy Carol Cox
15 ACLU of Nevada
16 732 S. Sixth St.
Suite 200A
Las Vegas, NV 89101-6928

17 **CONDITIONAL RESPONSE**
18 **TO MARCH 3, 2009 ORDER TO SHOW CAUSE**

19 **I. INTRODUCTION**

20 The issues in this case are alive and well. The "HOE" personalized license plate at issue
21 in this case remains registered to Mr. Junge, and therefore any concerns this Court has about
22 mootness are allayed. Furthermore, even if this were not the case, the mootness doctrine would
23 not apply due to (1) the public interest issues that are present; (2) the pending, ongoing concerns
24 that affect both the DMV and Mr. Junge; (3) the fact that the challenged actions at issue are

1 capable of repetition, yet evading review; and (4) that the chilling effect of the DMV's actions
2 produce a constitutional violation independent of the approval or denial of his personalized plate.

3 **II. FACTS AND PRODCEDURAL HISTORY**

4 In 1999, Respondent Mr. Junge applied for and was granted a personalized license
5 bearing the word "HOE." In 2006, while applying to renew the plate, a supervisor at the DMV
6 office decided that the plate might be inappropriate and asked the DMV's Special Plate
7 Committee to vote to revoke it, which it did. (DMV App. p. 6, ll. 4-28.) Mr. Junge then
8 received a letter stating that the "HOE" plates were being recalled because "these special plates
9 are unsuitably (sic) and inappropriate." (DMV App. p. 39, Petitioner's Exhibit A.) Mr. Junge
10 appealed the denial of his "HOE" vanity plate.

11 The Administrative Law Judge ruled as a conclusion of law that (under NAC 482.320,
12 the regulation governing review of license plate content, hereinafter "DMV Regulation") the
13 DMV has authority to prohibit any personalized license plate that is "determined by the
14 Department to be inappropriate" as well as any plates that *may* be offensive or inappropriate,
15 and the that the "HOE" plate was inappropriate. (DMV App. p. 72, Findings of Fact,
16 Conclusions of Law and Decision, Sept. 18, 2006.) Mr. Junge appealed.

17 On March 27, 2007, the Eighth Judicial District Court of Nevada then reversed the
18 Administrative Law Judge's decision (DMV App. p. 87-88, Decision and Order, Case No.
19 A529007) because "the word 'Hoe' means a gardening tool" and therefore was not
20 inappropriate. (Transcript of Dist. Crt. Proceedings, Case No. A-529007, Feb. 28, 2007, p. 17.)
21 The DMV appealed.

22 On June 13, 2008, this Court issued an order inviting the ACLUN to participate as
23 Amicus Curiae in order to examine, *inter alia*, the constitutional free speech issues raised in this
24

1 case. The ALCUN filed its brief on September 19, 2008 ("ACLU Brief"), and Appellant State
2 of Nevada filed a response brief on December 26, 2008 ("Response"). On January 27, 2009,
3 this Court granted ACLUN's motion for leave to file a reply to Appellant's Response brief, and
4 on February 11, 2009, the ACLUN filed its reply.

5 On March 3, 2009, this Court issued an Order to Show Cause directing the Appellant
6 State of Nevada, Department of Motor Vehicles (DMV) to advise the Court: (1) whether the
7 license plate at issue in this matter is currently registered to respondent William Junge; and (2)
8 if it is no longer registered to Mr. Junge, why this appeal should not be dismissed as moot.

9 It was recently discovered that the DMV has formally listed Mr. Junge's "HOE" plate as
10 a "not suitable" personalized plate, and has made it unavailable solely on that basis. See
11 Affidavit of Judy Cox in Support of Motion for Leave to Respond to March 3, 2009 Order to
12 Show Cause, and Response to Show Cause Order ("Cox Affidavit"), ¶¶7, 8, attached hereto and
13 incorporated herein. The ACLUN has recently verified the plate at issue in this appeal is still
14 registered to Mr. Junge. *Id.* at ¶9.¹

15 **III. THE ARGUMENT**

16 **A. The Instant Appeal Is Not Moot Because the License Plate at Issue is Still** 17 **Registered to Mr. Junge.**

18 The "HOE" personalized license plate at issue in this appeal appears to still currently
19 registered to Mr. Junge: he recently received a renewal form from the DMV showing that his
20 current registration is in full effect. See Cox Affidavit, ¶9.

21 This Court asked whether Mr. Junge still had this license plate registered to him, and if
22 he did not, whether the instant appeal was moot. Because Mr. Junge does indeed still have the

23 ¹ An examination of the lower left portion of the DMV's recent registration renewal sent
24 to Mr. Junge makes his reason for his choice of the "HOE" plate clear: he wanted a "HOE"
plate for his 1999 Chevrolet "TAHOE". See Cox Affidavit, ¶9, and its Exhibit E.

1 plate registered him, there are no mootness concerns. However, as discussed below, even if the
2 plate were no longer registered to Mr. Junge, the instant appeal would still not be mooted.

3 **B. Even if the Plate At Issue Were Not Registered to Mr. Junge, the Mootness**
4 **Doctrine Would Still Be Inapplicable.**

5 1. The Mootness Doctrine Does Not Apply Here Because of the Public
6 Interest Exception.

7 Any application of the mootness doctrine in this case is overridden by the fact that this
8 case concerns important constitutional issues of great public interest. The ACLUN feels that
9 this case implicates important constitutional free speech issues. The United State Supreme
10 Court made clear that license plate messages implicate the First Amendment rights of the
11 vehicle owner. *See Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (established that messages
12 on license plates may be considered speech by the vehicle owner); *see also Arizona Life*
13 *Coalition v. Stanton*, 515 F.3d 956 (9th Cir. 2008) (holding that privately crafted messages on
14 specialized license plates constitute primarily private speech subject to First Amendment
15 protections, with the plate's message being attributable to the vehicle owner, not the issuing
16 state.) The DMV is exercising unbridled discretion in approving or denying personalized
17 expression contained in individualized license plates in violation of the First Amendment to the
18 United States Constitution. In addition, the DMV's recent actions increase the urgency and
19 necessity that this Court render a ruling in this case: it has "upped the ante" by contemptuously
20 ignoring and violating the Eighth Judicial District Court's March 27, 2007 order reversing of
21 the Administrative Law Judge's decision. (DMV App. p. 87-88). The DMV has now listed the
22 "HOE" language in its records and on the DMV website as a "not suitable" personalized plate.
23 *See Cox Affidavit*, ¶¶7, 8. Thus, the DMV has shown that its violation of First Amendment
24 expression has significance beyond Mr. Junge and knows no boundaries: the DMV does not

1 even respect the rulings of Nevada's district courts. This Court apparently agrees that this case
2 raises important constitutional issues, because it *sua sponte* invited the ACLUN to participate as
3 amicus curiae in this appeal.

4 Nevada maintains a public interest exception to the mootness doctrine, where this Court
5 will consider an otherwise moot case where important constitutional issues are raised. See
6 *Kirkpatrick v. Eighth Judicial Dist. Court*, 119 Nev. 66, 68, 64 P.3d 1056, 1057 (2003) (where
7 15 year old New Mexican received Nevada district court authorization to marry in Nevada
8 despite her marriage at that age being illegal in New Mexico, this Court entertained her case
9 based on the "important constitutional issue raised" despite the fact that it was mooted by her
10 having turned 16 and obtaining a marriage license in New Mexico); see also *Jason S. v. Valley*
11 *Hosp. Med. Ctr. (In re L.S.)*, 120 Nev. 157, 166, fn. 24, 87 P.3d 521, 526, fn. 24 (2004) (*sua*
12 *sponte* hearing of an issue mooted by not being raised in the lower court because it was an
13 important constitutional issue).

14 This Court's decision to decision to invite the ACLUN to participate as amicus curiae, as
15 well as the DMV's continued flagrant First Amendment Violation and contempt of the Eighth
16 Judicial District Court's order show beyond a doubt that the public interest exception to the
17 mootness doctrine applies here.

18 2. Mootness Cannot Be Found in this Case Even If the Plate at Issue is not
19 Registered to Mr. Junge, or if Mr. Junge Himself Failed to Renew His
20 Registration.

21 Even if the "HOE" plate was not currently registered to Mr. Junge, or if he failed to
22 renew the registration of the plate, this fact would still be insufficient to invoke the mootness
23 doctrine. Mr. Junge could seek reinstatement of his registration for this personalized plate, and
24 if this Court had dismissed this appeal based on mootness, the issue would be revived and

1 unresolved. Moreover, because Mr. Junge prevailed in the district court, the DMV would still
2 be restrained in its actions by the district court's ruling without the benefit of a final resolution
3 or legal determination from this Court. It is both Mr. Junge's and the DMV's interests that are
4 thus implicated and which prevent a finding of mootness, and which militate in favor of this
5 Court making a final determination as to the issue on appeal in this case.

6 This situation parallels the one addressed by the U.S. Supreme Court in *City of Erie v.*
7 *Pap's A.M.*, 529 U.S. 277 (2000). In *Erie*, the state court enjoined the enforcement of the city's
8 anti-nudity ordinance, but the nude dancing club that brought the challenge had closed by the
9 time the case reached the Supreme Court, and the proprietor submitted an affidavit stating that
10 he did not intend to resume the business. The Supreme Court found that the case was not moot
11 for two reasons. First, the Supreme Court reached that conclusion in part because the business
12 "could again decide to operate." *Id.* at 287. Likewise here, if Mr. Junge had for some reason
13 allowed his registration of the "HOE" plate to lapse, he could again decide to register it.
14 Second, and equally applicable here, the *Erie* Court based its refusal to apply the mootness
15 doctrine on the fact that the respondent club owner sought "to have the case declared moot"
16 after the business had "prevailed below," obtaining a judgment that invalidated the city's
17 ordinance. *Id.* at 288. The *Erie* Court went on to note that had they declared *Erie* moot, the
18 defendant city would have been saddled with an "ongoing injury," *i.e.*, the judgment
19 invalidating its law. *Id.* Here, the DMV is in a similar position: if this Court declares the
20 DMV's appeal moot, the DMV will be subject to the district court's judgment invalidating its
21 review process for personalized plates, without the benefit of a ruling from this Court to finally
22 dispose of the issue one way or the other. Thus, the posture of this case forecloses any finding
23
24

1 of mootness, even if the "HOE" plate is no longer registered to Mr. Junge, and even if he
2 himself is responsible for the registration lapsing.

3 3. The Question of Whether the License Plate is Currently Registered to Mr.
4 Junge is Irrelevant Because the Challenged Action is Capable of
5 Repetition Yet Evading Review

6 Even if this license plate is not currently registered to respondent Junge, the appeal
7 should not be dismissed as moot, because the "capable of repetition, yet evading review"
8 exception to the mootness doctrine would apply. The general formula applicable to non-class
9 action cases is found in *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam), where it
10 was held that an injury is capable of repetition, yet evades review if: (1) the challenged action
11 was of limited duration, too short to be fully litigated prior to its cessation or expiration; and (2)
12 there is a reasonable expectation that the same complaining party will be subjected to the same
13 action again.

14 Nevada has adapted this rule to hold that a court may decide a technically moot case
15 when otherwise "an important question of law could never be decided because of the nature of
16 its timing." See *State v. Washoe Co. Public Defender*, 105 Nev. 299, 301, 775 P.2d 217, 218
17 (1989). This exception to the mootness doctrine applies when the duration of the challenged
18 action is "relatively short," and there is a "likelihood that a similar issue will arise in the future."
19 *Traffic Control Servs. v. United Rentals*, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004); see
20 also *Del Papa v. Board of Regents*, 114 Nev. 388, 401, 956 P.2d 770, 779 (Nev. 1998) (where
21 Board of Regents engaged in a non-public vote concerning the issuance of a press release *that*
22 *was ultimately not issued*, mootness doctrine did not apply to question of whether this act
23 violated the Open Meeting Law because the act was capable of repetition, yet evading review).

1 The DMV's annual registration requirement and its sole and exclusive power to cancel
2 registrations fulfill the first element of the *Weinstein* test. *See Weinstein*, 423, U.S., at 149
3 (mootness doctrine inapplicable where the challenged action was of limited duration, too short
4 to be fully litigated prior to its cessation or expiration.) The DMV exercises its unbridled
5 discretion regarding the approval or denial of personalized expression contained in
6 individualized license plates—which violates the First Amendment to the United States
7 Constitution—on an annual basis. This one-year period does not provide sufficient time to
8 address the challenged violation, because each year will be a separate act of violation of Mr.
9 Junge's right to freedom of expression. *See Traffic Control Servs.*, 120 Nev. 168, 171-72, 87
10 P.3d 1054, 1057 (2004) (finding that the term of a one-year non-competition covenant was
11 sufficiently short to invoke the exception). The DMV can approve or deny the "HOE"
12 personalized plate at its whim, making the fact of yearly registration of the plate to Mr. Junge
13 too short of a time frame to support a mootness determination. This is especially apparent in
14 this case, where the DMV has directly violated the district court order requiring the DMV to
15 permit Mr. Junge to have the "HOE" plate registration, putting Mr. Junge in the impossible
16 position of not ever being able to know with certainty when this latest violation of Mr. Junge's
17 First Amendment rights actually occurred. Does this contemptuous behavior by the DMV apply
18 to the original registration attempt in 2006, or to subsequent registrations? Moreover, the
19 application of the exception to mootness based on this short time frame is supported by the fact
20 that the DMV can escape any consequences for its unconstitutional actions by simply changing
21 its determination as to the approval or denial of certain plates from year to year.

22 The second element of the *Weinstein* test is also met here. *See Weinstein*, 423, U.S., at
23 149 (mootness doctrine inapplicable where there is a reasonable expectation that the same
24

1 complaining party will be subjected to the same action again.)² The DMV has disregarded the
2 Eighth Judicial District Court's March 27, 2007 order requiring the DMV to reinstate Mr.
3 Junge's "HOE" tag (DMV App. p. 87-88, Decision and Order, Case No. A529007), and its
4 finding that "the word 'Hoe' means a gardening tool" and therefore was not inappropriate.
5 (Transcript of Dist. Ct. Proceedings, Case No. A-529007, Feb. 28, 2007, p. 17.) The DMV has
6 shown quite plainly that Mr. Junge continues to be subject to the DMV's violation of his right to
7 expression, and that he will continue to be subject to this abuse. Moreover, even if Mr. Junge
8 had for some reason let his registration lapse—such as being worn down by the DMV's dogged
9 abuse of his right to expression—he could easily decide to re-register the "HOE" plate in the
10 future. This certainly qualifies as the requisite "reasonable expectation" of recurrence found
11 sufficient by the U.S. Supreme Court to avoid mootness. *Honig v. Doe*, 484 U.S. 305, 318-319,
12 n. 6; *see also Roe v. Wade*, 410 U.S. 113, 124-125 (1973) (challenge to abortion statute was
13 held not moot eve though the woman who initiated the action was no longer pregnant, on the
14 basis that she could possibly become pregnant at a later date.) Therefore, even if the "HOE"

15 ² This element of the *Weinberg* test is in fact quite fluid and not a hard and fast rule: in
16 many cases, the U.S. Supreme Court and Ninth Circuit Court of Appeals have simply ignored
17 the necessity of determining whether there will likely be a repetition of the injury in question.
18 *See, e.g., Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 125-26 (1974) (strike over but
19 action against strikers receiving welfare not moot because state policy is fixed; no discussion of
20 probability of another strike against plaintiff-employer); *Roe v. Wade*, 410 U.S. 113, 125 (1973)
21 (attack on abortion laws not moot despite plaintiff no longer being pregnant and giving no
22 indication that she will again become pregnant and seek abortion); *Dunn v. Blumstein*, 405 U.S.
23 330, 333 n.2, (1972) (even though plaintiff now eligible to vote, challenge to durational
24 residency requirement allowed because others still affected); *Moore v. Ogilvie*, 394 U.S. 814,
816 (1969) (election over but challenge to nominating petition procedure will proceed because
of "continuing controversy in the federal-state area"); *Allen v. Monger*, 583 F.2d 438, 440 (9th
Cir. 1978) (action by now-discharged sailors who served aboard now moth-balled ship to enjoin
regulation prohibiting petitioning of Congressmen not moot because "serious questions raised"),
vacated, 444 U.S. 1063, 100 S. Ct. 1003, 62 L. Ed. 2d 745 (1980); *Webster v. Mesa*, 521 F.2d
442, 443 (9th Cir. 1975) (action against law prohibiting voter who has signed partisan
candidate's petition from also signing independent's petition for same office not moot despite
end of petitioning period).

1 personalized plate is no longer registered to Mr. Junge, the mootness doctrine is simply
2 inapplicable.

3 4. Any Concerns About Mootness Are Overridden By the Need to
4 Counteract the Chilling Effect Produced by the DMV's Disregard of Mr.
5 Junge's Right to Expression and its Violation of the District Court's
6 Order.

7 The chilling effect produced by the DMV's actions to date further demonstrates why the
8 instant appeal is not moot in any manner. The First Amendment issues raised in this case
9 invoke a public interest concern and collateral constitutional violations that eliminate any
10 mootness and extend beyond Mr. Junge's individual claim.

11 A scheme that makes the ability to engage in constitutionally protected expression
12 contingent upon having permission from the government, or its designee, constitutes a prior
13 restraint. *See Freedman v. Maryland*, 380 U.S. 51, 58 (1965); *FW/PBS, Inc. v. City of Dallas*,
14 493 U.S. 215, 227 (1990). Unfettered discretion on the part of governmental agencies is an
15 impermissible prior restraint. *See City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S.
16 750, 770 (1988). The DMV's denial of Mr. Junge's protected expression *via* his personalized
17 plate precluded him from disseminating his message, and thus has a chilling effect on his
18 protected speech, as well as that of others like him who must deal with the DMV in seeking
19 personalized plates. This is a constitutional violation independent of the DMV's inappropriate
20 and standardless denial of Mr. Junge's plate. *See Bd. of County Com'rs, Wabaunsee County,*
21 *Kan. v. Umbehr*, 518 U.S. 668, 674 (1996) (recognizing that a chilling effect is a "constitutional
22 violation[] [that] may arise from the deterrent, or chilling, effect of governmental [efforts] that
23 fall short of a direct prohibition against the exercise of First Amendment rights." (*quoting Laird*
24 *v. Tatum*, 408 U.S. 1, 11 (1972))). Any concerns over mootness are thus superseded by this
broader public concern that goes beyond Mr. Junge's individual case.

1 The fact that the DMV has now officially listed Mr. Junge's personalized plate as "not
2 appropriate" in its records and on its website in violation of the district court's order further
3 emphasizes the fact that the concerns and issues in this case extend far beyond Mr. Junge
4 individually. *See Cox Affidavit, ¶9.* This Court needs to address the DMV's ability to exercise
5 unbridled discretion in approving or denying personalized plates, because the DMV apparently
6 has no intention of pulling back its inappropriate restraints on expression in relation to Mr.
7 Junge or anyone else. Therefore, even if the plate at issue is no longer registered to Mr. Junge,
8 the instant appeal remains a live cause and is not in any way mooted.

9 **IV. CONCLUSION**

10 For the reasons set forth above, the ACLUN respectfully request that the instant appeal
11 be allowed to continue so that the important issue at stake in this matter can be fully addressed
12 by this Court.

13
14 Respectfully submitted this 18th day of March, 2009.

15
16 By: Judy C. Cox
17 Judy Carol Cox
18 ALCU of Nevada
19 732 S. Sixth St.
20 Suite 200A
21 Las Vegas, NV 89101-6928
22
23
24

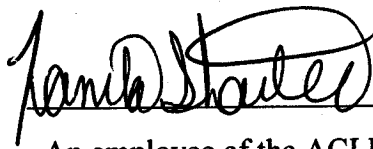
1
2
3 **CERTIFICATE OF SERVICE**

4 I certify that on the 18th day of March, 2009, I served a copy of the Motion for Leave to
5 Allow Amicus ACLU of Nevada to File A Response to This Court's March 3, 2009 Order to
6 Show Cause; and Response to Show Cause Order, on all parties by mailing, postage prepaid, a
7 true copy thereof, addressed to:

8 WILLIAM JUNGE
9 5409 CONTERA COURT
10 LAS VEGAS, NEVADA 89102

11 CATHERINE CORTEZ MASTO
12 OFFICE OF NEVADA ATTORNEY GENERAL
13 100 N. CARSON STREET
14 CARSON CITY, NEVADA 89701

15 CAROLYN L. WATERS
16 TRANSPORTATION DIVISION
17 555 EAST WASHINGTON AVE
18 SUITE 3900
19 LAS VEGAS, NEVADA 89101

20
21
22
23
24


An employee of the ACLU of Nevada

1 **AFFIDAVIT OF JUDY COX IN SUPPORT OF**
2 **MOTION FOR LEAVE TO RESPOND TO MARCH 3, 2009 ORDER TO SHOW**
 CAUSE, AND RESPONSE TO SHOW CAUSE ORDER

3 State of Nevada)
) ss.
4 County of Clark)

5 Affiant, Judy Cox, Esq., being first duly sworn upon oath, deposes and state as follows:

6 1. I am an attorney and a member in good standing of the State Bar of Nevada
7 (admitted in October, 2008), and am an attorney for the American Civil Liberties Union of
8 Nevada ("ACLUN"). The ACLUN is a statewide organization devoted to the protection of civil
9 rights and civil liberties of all Nevadans.

10 2. On June 13, 2008, this Court issued an order inviting the ACLUN to participate
11 as Amicus Curiae in *State of Nevada, DMV v. Junge*, Case no: 49350, in order to examine, *inter*
12 *alia*, the constitutional and free speech issues raised in this appeal. I have received and
13 reviewed a copy of the March 3, 2009 Nevada Supreme Court's Order to Show Cause why the
14 appeal would not be moot if the "HOE" plate is no longer registered to Mr. Junge.

15 3. Based on the district court's ruling that the "HOE" plate was not offensive and
16 could not be revoked because it was "inappropriate," I assumed that if Mr. Junge no longer had
17 the "HOE" plate, then it would be available for another person to choose, so I went to the
18 Nevada DMV website to see if the "HOE" plate was available.

19 4. The Nevada DMV website has an online personalized plate search which lets a
20 person verify whether their choice of letter and/or number combinations for a personalize
21 license plate is available. A true and correct copy of this webpage is attached as **Exhibit A**.

22 5. The webpage states "You can choose any personalized combination that is not
23 offensive or in bad taste, has not already been issued to someone else and does not conflict with
24 any standard-issue Nevada numbering system."

1 6. I clicked on the "personalized plate search" link which took me to an interactive
2 page in which I could type any personalized plate letter/number combination that I wished. A
3 true and correct copy of this webpage is attached as **Exhibit B**.

4 7. I typed in HOE into the search box and hit "submit." The result message stated
5 that HOE was not available (N/A) because:

6 **"HOE is not suitable and cannot be ordered. You may enter a
7 different combination and try again."**

8 A true and correct copy of this webpage result is attached as **Exhibit C**.

9 8. I thought might be the standard message for all unavailable personalized plates,
10 so I also tried another offensive plate message ("PIMP") and a non-offensive popular plate
11 message ("REBEL"). The result for the PIMP plate stated "PIMP is not suitable and cannot be
12 ordered" whereas the result for REBEL simply stated that "REBEL is unavailable." True and
13 correct copies of these webpage results for PIMP and REBEL are attached as **Exhibit D**.

14 9. On March 17, 2009, our office received a copy of the registration renewal form
15 for Appellee William Junge's "HOE" personalized license plate which he received from
16 Appellant Nevada DMV. The form indicates that Mr. Junge's registration of this plate is
17 current and due to expire on April 10, 2009. A true and correct copy of the renewal form is
18 attached hereto as **Exhibit E**.

19 Further affiant sayeth naught.

20 Judy C. Cox
21 Judy Cox, Esq.

22 SUBSCRIBED and SWORN to before me
23 this 18th day of March, 2009.

24 Tamika M. Shauntee
NOTARY PUBLIC in and for said
County and State

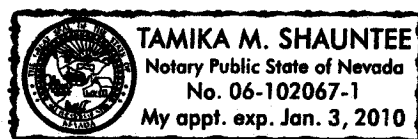


EXHIBIT A

[HOME](#)
[About Us](#)
[Driver License](#)
[Registration](#)
[License Plates](#)
[Business](#)
[Forms](#)
[Offices](#)



Nevada Department of Motor Vehicles



Personalized Plates

On This Page

- [Costs & Application](#)
- [What Plate Numbers Are Available?](#)
- [How Do I Order Custom Plates?](#)
- [How Do I Order Plates as a Gift?](#)
- [Complaints](#)

What's Related

- [License Plates Home Page](#)
- [Registration Home Page](#)
- [Circa 1982 Replica Plates](#)
- [Fire Fighter Plates](#)
- [Charitable and Collegiate](#)
- [Organizational Plates](#)
- [Veterans & Military](#)
- [Classic Vehicles](#)
- [Proposed Specialty Plates](#)
- [Sample and Souvenir Plates](#)

NEW!

Check [Personalized Plate Numbers Online!!](#) See how your plates will look before you order.

Flat Plates

Most Nevada license plates are no longer stamped or embossed. They do not have raised lettering. The DMV has transitioned to digitized license plate manufacturing that is more efficient and costs less than older methods.



You must have **Acrobat Reader software** to view and print PDF forms. It's free and easy to install. See [Forms Help](#) or [Download Reader](#).

● Personalized Plates

[Forms Help](#) | [Back To Top](#)

Plate Image (Click for a larger picture)	Type	Standard Initial/Annual Fee	Motorcycle Initial/Annual Fee	Availability
 	Personalized Plates Standard Nevada plate design with your choice of up to 7 custom letters/numbers. 6 letters/numbers maximum for motorcycles and small trailers.	\$36/\$20	\$35.50/\$20	Custom-Ordered Application sp66

Fees listed are in addition to all other applicable registration fees. Incomplete, illegible or incorrect applications will be returned.

Use our online [Personalized Plate Search](#) to look up available numbers.

● What Plate Numbers Are Available?

[Back To Top](#)

Personalized plates in the Sunset style can have up to seven characters. Specialty plates vary from four to seven characters as designated on each plate's application. You do not have to fill all available spaces. Punctuation and special symbols are not allowed.

Use our online [Personalized Plate Search](#), [e-mail](#) or call to verify whether your choice is available. Please have three choices ready when you fill out the application.

You can choose any personalized combination that is not offensive or in bad taste, has not already been issued to someone else and does not conflict with any standard-issue Nevada numbering system. If your plate number is denied or recalled for any of these reasons, you may appeal the decision through the [Office of Administrative Hearings](#).

Personalized plate numbers which have expired or been surrendered become available to any applicant 18 months after expiration. Individuals may transfer plate numbers if the original owner signs a form as the new owner's registration is completed at a DMV office.

● How Do I Order Custom Plates?

[Forms Help](#) | [Back To Top](#)

You have the choice of ordering by mail, fax or in person. We suggest mail or fax if your vehicle is already registered in Nevada, if you are moving to Nevada in the near future or if you will be buying a vehicle in the near future. Order in person if you will be registering a vehicle or renewing the registration within the next 60 days. See [Previously-Issued Plate Numbers](#) if you wish to order a specific standard plate number.

[Application sp66 - Personalized Plate](#)

[Application sp33 - Veterans](#)

[Application sp41 - Professional Firefighters](#)

[Application sp62 - Volunteer Firefighters](#)

[Application sp49 - Masons](#)

Order by Mail or Fax. Check for three choices on our [Personalized Plate Search](#). You may also [e-mail](#) or call.

Download and complete the appropriate application for your plate. Mail the application and fees to the address on the application. Fees may be paid by check or money order payable to DMV or a [Credit Card Authorization](#). For faxed orders, fax the completed application and a [Credit Card Authorization](#) to (775) 684-4797.

You can order plates even if you are moving to Nevada within the next 60 days but have not actually registered a vehicle here yet.

Personalized plates must be approved, manufactured and then shipped to the DMV or Assessor's office you chose on the application. If your application is rejected, your check will be returned.

When the DMV or Assessor receives your plates, the staff will send you a letter notifying you they are ready.

If your vehicle is currently registered in Nevada, bring the old plates to the DMV for surrender. If you wish to keep them, bring the rear plate only to surrender the decal.

If you choose to keep the same expiration date, we will issue a new registration slip and decal with your new plates. No emissions inspection or registration renewal is required.

You have the option of renewing your vehicle registration for a full year. Complete an emissions inspection if required and if the last test was completed more than 90 days ago. Your expiration date will change if the current expiration date is more than 35 days away. Credit will be given for the unused portion of your current Nevada registration.

If you have just purchased a vehicle or have already moved to Nevada, we encourage you to order in person at the same time you register your vehicle.

Order in Person. You can order your custom plates in person at the same time you register a vehicle or renew its registration at a DMV Full Service Office or at a County Assessor's Office which offers vehicle registration services. You may wish to use our online Personalized Plate Search in advance to help select your plate style and/or personalized numbering.

If you have just purchased a vehicle or are registering it in Nevada for the first time, see the full list of Registration Requirements or New Resident Guide and use our online Registration Fee Estimates. Bring all required documentation along with the appropriate license plate application. We will issue the vehicle registration slip, decal and a temporary movement permit. The plates will be mailed to you.

If your vehicle is currently registered in Nevada, bring the old plates to the DMV for surrender. If you wish to keep them, bring the rear plate only to surrender the decal.

If you choose to keep the same expiration date, we will issue a new registration slip, decal and a temporary movement permit. No emissions inspection or registration renewal is required. The plates will be mailed to you.

You have the option of renewing your vehicle registration for a full year. Complete an emissions inspection if required and if the last test was completed more than 90 days ago. Your expiration date will change if the current expiration date is more than 35 days away. Credit will be given for the unused portion of your current Nevada registration.

● How Do I Order Plates As A Gift?

[Back To Top](#)

We encourage you to order by mail or fax as above, placing your name and address on the application and the recipient's name on the line labeled "Name of person plate will be registered to if other than applicant."

Personalized plates in the Sunset style can have up to seven characters. Specialty plates vary from four to seven characters as designated on each plate's application. You do not have to fill all available spaces. Punctuation and special symbols are not allowed. Use our online Personalized Plate Search to verify whether your choices are available.

When the DMV or County Assessor's office you chose on the application receives your plates, the staff will notify you by mail. The office will hold the plates for 60 days. We cannot release license plates which are not registered to a vehicle.

The registration will have to be completed in person at a DMV or Assessor office as outlined above.

● Plate Number Complaints

[Forms Help](#) | [Back To Top](#)

If you see a personalized plate number that you find offensive, you may ask the Department to review and possibly recall it. Please complete the following form and mail it to the address listed.

[License Plate Complaint Form \(SP 74\)](#)

The Department will consider recalling any personalized license plate that:

- Expresses contempt, ridicule, or superiority of race, ethnic heritage, religion, gender, or political affiliation.
- Contains any connotation that is sexual, vulgar, derogatory, profane, or obscene.
- Contains a direct or indirect reference to drug or drug paraphernalia, or a gang.
- Makes a defamatory reference to a person or group.

- Is determined by the department to be inappropriate.

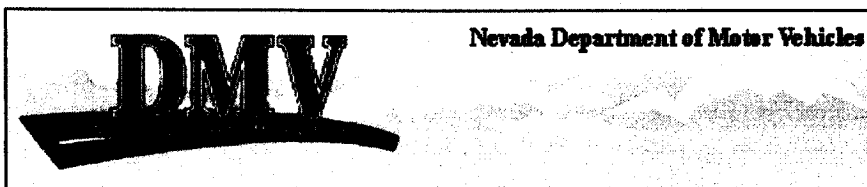


[Driver License](#) | [Registration](#) | [License Plates](#) | [Forms](#)
[Locations](#) | [FAQs](#) | [Online Services](#) | [Site Map](#) | [Home](#)

[Nevada Internet Privacy Policy \(PDF\)](#)
[Federal Rehabilitation Act \(Section 508\)](#)

E-Mail: info@dmv.nv.gov
Please include your plate number or other
information needed to research your request.
Copyright © 1997-2009 Nevada Department of Motor Vehicles

EXHIBIT B



Personalized License Plate Availability Search

Please read the following information before you begin:

Combinations **MAY NOT** exceed the number of positions, including spaces, designed for each Specialty License Plate. Symbols and punctuation marks **MAY NOT** be used.

For the most part, Specialty License Plates are available for passenger and light duty vehicles only. Specialty License Plates are not available for motorcycles. In some instances a Specialty License Plate may be manufactured in the small trailer plate design. Please contact DMV as referenced below for more details on small trailer plates.

The department has the right to refuse any combination of letters and/or numbers that may carry connotations offensive to good taste and decency, or which would be misleading, or in conflict with any license plate series that has been issued.

The Department will reject requests for any personalized license plate that:

- Expresses contempt, ridicule, or superiority of race, ethnic heritage, religion, gender, or political affiliation.
- Contains any connotation that is sexual, vulgar, derogatory, profane, or obscene.
- Contains a direct or indirect reference to drug or drug paraphernalia, or a gang.
- Makes a defamatory reference to a person or group.
- Is determined by the department to be inappropriate.

Please allow 4 to 6 weeks for your personalized license plate to be manufactured.

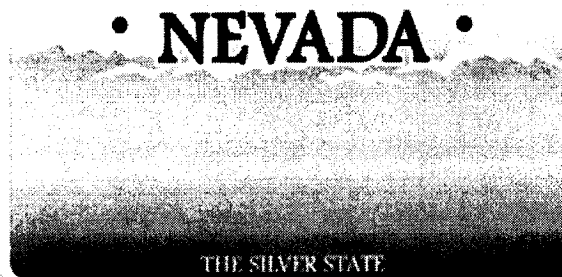


You must have Acrobat Reader software to view and print PDF forms.
It's free and easy to install. See [Forms Help](#) or [Download Reader](#).

DMV online services are normally available:

Monday:	24 Hours.
Tuesday - Friday:	From 2:00 am to midnight.
Saturday:	From 2:00 am to 8:00 pm.
Sunday & Holidays:	From midnight to 9:00 pm.

Choose a different plate background.



BEGIN
HERE

Personalized license plate search
Enter the plate number.

Plate
number

THIS PLATE CAN HOLD 7 CHARACTERS.
HOE

Submit

Reset

Ordering Special Personalized Plates online is currently unavailable. You may select one of the forms below to order your Special Personalized Plates or see also [How to Order Custom Plates](#).

[Application sp66 - Personalized Plate](#)

[Application sp45 - Circa 1982 Replica Plate](#)

[Application sp41 - Professional Firefighters](#)

[Application sp62 - Volunteer Firefighters](#)

[Application sp49 - Masons](#)

[Application sp33 - Veterans](#)



This schedule may vary due to maintenance.

● Contact Us

Nevada Department of Motor Vehicles

555 Wright Way

Carson City, NV 89711-0725

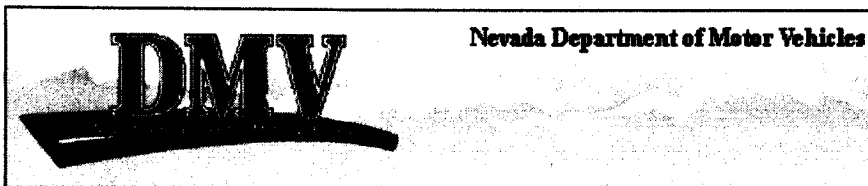
E-mail: info@dmv.nv.gov

Call a customer service representative:

Las Vegas Area	486-4DMV (702) 486-4368
Reno/Sparks/Carson City	684-4DMV (775) 684-4368
Rural Nevada	1-877-368-7828
Fax	(775) 684-4992
TDD (Hearing Impaired <i>Only</i>)	(775) 684-4904

[DMV Home Page](#) | [Online Services](#) | [State of Nevada Home Page](#)

EXHIBIT C



Personalized License Plate Availability Search

Please read the following information before you begin:

Combinations **MAY NOT** exceed the number of positions, including spaces, designed for each Specialty License Plate. Symbols and punctuation marks **MAY NOT** be used.

For the most part, Specialty License Plates are available for passenger and light duty vehicles only. Specialty License Plates are not available for motorcycles. In some instances a Specialty License Plate may be manufactured in the small trailer plate design. Please contact DMV as referenced below for more details on small trailer plates.

The department has the right to refuse any combination of letters and/or numbers that may carry connotations offensive to good taste and decency, or which would be misleading, or in conflict with any license plate series that has been issued.

The Department will reject requests for any personalized license plate that:

- Expresses contempt, ridicule, or superiority of race, ethnic heritage, religion, gender, or political affiliation.
- Contains any connotation that is sexual, vulgar, derogatory, profane, or obscene.
- Contains a direct or indirect reference to drug or drug paraphernalia, or a gang.
- Makes a defamatory reference to a person or group.
- Is determined by the department to be inappropriate.

Choose a different plate background.



HOE is not suitable and cannot be ordered. You may enter a different combination and try again.

BEGIN
HERE

Personalized license plate search
Enter the plate number.

Plate
number

THIS PLATE CAN HOLD 7 CHARACTERS.

Submit

Reset

Ordering Special Personalized Plates online is currently unavailable. You may select one of the forms below to order your Special Personalized Plates or see also [How to Order Custom Plates](#).

[Application sp66 - Personalized Plate](#)

[Application sp45 - Circa 1982 Replica Plate](#)

[Application sp41 - Professional Firefighters](#)

[Application sp62 - Volunteer Firefighters](#)

[Application sp49 - Masons](#)

[Application sp33 - Veterans](#)



Please allow 4 to 6 weeks for your personalized license plate to be manufactured.



You must have Acrobat Reader software to view and print PDF forms.

It's free and easy to install. See [Forms Help](#) or [Download Reader](#).

DMV online services are normally available:

Monday:

24 Hours.

Tuesday - Friday:

From 2:00 am to midnight.

Saturday:

From 2:00 am to 8:00 pm.

Sunday & Holidays:

From midnight to 9:00 pm.

This schedule may vary due to maintenance.

● Contact Us**Nevada Department of Motor Vehicles**

555 Wright Way

Carson City, NV 89711-0725

E-mail: info@dmv.nv.gov**Call a customer service representative:**

Las Vegas Area

486-4DMV (702) 486-4368

Reno/Sparks/Carson City

684-4DMV (775) 684-4368

Rural Nevada

1-877-368-7828

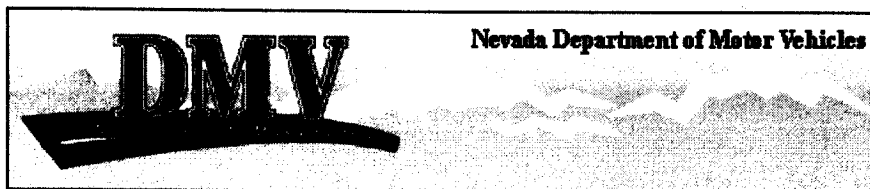
Fax

(775) 684-4992

TDD (Hearing Impaired *Only*)(775) 684-4904

[DMV Home Page](#) | [Online Services](#) | [State of Nevada Home Page](#)

EXHIBIT D



Personalized License Plate Availability Search

Please read the following information before you begin:

Combinations **MAY NOT** exceed the number of positions, including spaces, designed for each Specialty License Plate. Symbols and punctuation marks **MAY NOT** be used.

For the most part, Specialty License Plates are available for passenger and light duty vehicles only. Specialty License Plates are not available for motorcycles. In some instances a Specialty License Plate may be manufactured in the small trailer plate design. Please contact DMV as referenced below for more details on small trailer plates.

The department has the right to refuse any combination of letters and/or numbers that may carry connotations offensive to good taste and decency, or which would be misleading, or in conflict with any license plate series that has been issued.

The Department will reject requests for any personalized license plate that:

- Expresses contempt, ridicule, or superiority of race, ethnic heritage, religion, gender, or political affiliation.
- Contains any connotation that is sexual, vulgar, derogatory, profane, or obscene.
- Contains a direct or indirect reference to drug or drug paraphernalia, or a gang.
- Makes a defamatory reference to a person or group.
- Is determined by the department to be inappropriate.

Choose a different plate background.

REBEL is not available. You may enter a different combination and try again.

BEGIN HERE **Personalized license plate search**
Enter the plate number.

Plate number	THIS PLATE CAN HOLD 7 CHARACTERS.
--------------	-----------------------------------

Submit Reset

Ordering Special Personalized Plates online is currently unavailable. You may select one of the forms below to order your Special Personalized Plates or see also [How to Order Custom Plates](#).

- [Application sp66 - Personalized Plate](#)
- [Application sp45 - Circa 1982 Replica Plate](#)
- [Application sp41 - Professional Firefighters](#)
- [Application sp62 - Volunteer Firefighters](#)
- [Application sp49 - Masons](#)
- [Application sp33 - Veterans](#)



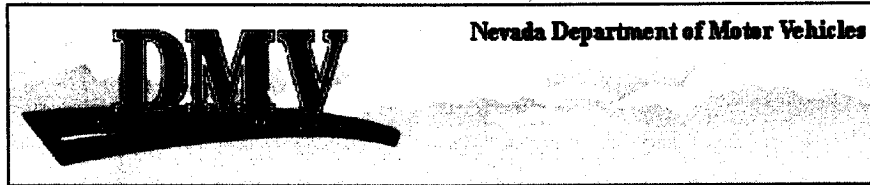
Please allow 4 to 6 weeks for your personalized license plate to be manufactured.



You must have Acrobat Reader software to view and print PDF forms.
It's free and easy to install. See [Forms Help](#) or [Download Reader](#).

DMV online services are normally available:

Monday:	24 Hours.
Tuesday - Friday:	From 2:00 am to midnight.
Saturday:	From 2:00 am to 8:00 pm.



Personalized License Plate Availability Search

Please read the following information before you begin:

Combinations **MAY NOT** exceed the number of positions, including spaces, designed for each Specialty License Plate. Symbols and punctuation marks **MAY NOT** be used.

For the most part, Specialty License Plates are available for passenger and light duty vehicles only. Specialty License Plates are not available for motorcycles. In some instances a Specialty License Plate may be manufactured in the small trailer plate design. Please contact DMV as referenced below for more details on small trailer plates.

The department has the right to refuse any combination of letters and/or numbers that may carry connotations offensive to good taste and decency, or which would be misleading, or in conflict with any license plate series that has been issued.

The Department will reject requests for any personalized license plate that:

- Expresses contempt, ridicule, or superiority of race, ethnic heritage, religion, gender, or political affiliation.
- Contains any connotation that is sexual, vulgar, derogatory, profane, or obscene.
- Contains a direct or indirect reference to drug or drug paraphernalia, or a gang.
- Makes a defamatory reference to a person or group.
- Is determined by the department to be inappropriate.

Choose a different plate background.

PIMP is not suitable and cannot be ordered. You may enter a different combination and try again.

BEGIN
HERE

Personalized license plate search
 Enter the plate number.

Plate number

THIS PLATE CAN HOLD 7 CHARACTERS.

Submit

Reset

Ordering Special Personalized Plates online is currently unavailable. You may select one of the forms below to order your Special Personalized Plates or see also [How to Order Custom Plates](#).

[Application sp66 - Personalized Plate](#)
[Application sp45 - Circa 1982 Replica Plate](#)
[Application sp41 - Professional Firefighters](#)
[Application sp62 - Volunteer Firefighters](#)
[Application sp49 - Masons](#)
[Application sp33 - Veterans](#)



Please allow 4 to 6 weeks for your personalized license plate to be manufactured.

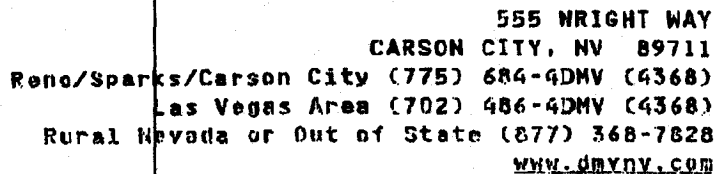


You must have Acrobat Reader software to view and print PDF forms.
 It's free and easy to install. See [Forms Help](#) or [Download Reader](#).

DMV online services are normally available:

Monday: 24 Hours.
 Tuesday - Friday: From 2:00 am to midnight.

EXHIBIT E



ITEMIZED FEES

1982 REPLICA	
REG FEE	HOE \$33.00
BASIC GOV SVCS TAX	\$26.00
SUPL GOV SVCS TAX	\$6.00

TOTAL FEES	\$85.00
-------------------	----------------

SMOG-EMISSIONS CHECK - REQUIRED

Web and Phone Options Not Available for Diesel Vehicles that Require a Smog Check

2. CALL US In Reno/Sparks/Carson City: (775) 684-4DMV (4338); Las Vegas area: (702) 486-4DMV(4368)
Rural Nevada: (877) 358-7829. Use your access code and just follow the voice prompts

3. FILL OUT and return the bottom portion of this form with either a check or money order for the proper amount or complete and enclose the credit card form below. Please **INCLUDE** any tax exemption authorization and Emission Control Certificate if applicable. **MAKE** check payable to DMV and write your vehicle license plate number on your check or money order. Renewal decals will be mailed within 12 days. **NEVADA HAS NO GRACE PERIOD.**

RETAIN TOP PORTION FOR PERSONAL RECORDS

USE YOUR CREDIT CARD or ATM/DEBIT CARD by filling out the form

Name (as it appears on the card) _____ Phone () _____

Billing Address	
------------------------	--

City _____ State _____ Zip Code _____

Date _____	Plate No. _____	Amount \$ _____	Sign Here _____
------------	-----------------	-----------------	-----------------

CHARGE MY ☐ ATM/DEBIT (STAR, NYCE, PULSE) ☐ VISA ☐ MASTERCARD ☐ AMERICAN EXPRESS ☐ DISCOVER

CARD NUMBER:

--	--	--	--	--	--	--	--	--	--	--	--	--	--

 EXPIRES:

--	--	--	--

I understand and agree that by checking ATM/DEBIT, I am authorizing the DMV to debit my account for the amount specified above. Further, I understand and agree that if the ATM/DEBIT transaction fails or is declined, I am authorizing the DMV to complete the transaction as a credit card charge if possible.

VEHICLE INFORMATION - 1982 REPLICA

LICENSE NO: HOE **EXPIRES: 04-10-2009**

VIN NO: 3GNEC18RXXG160826 YR/MAKE: 1999 CHEV

MODEL: C1500 TANOE TYPE: UT CYL: 08

FUEL: G 2 WGT: 5999 MRP: \$36755

COUNTY BASED IN: CLARK

- ITEMIZED FEES -

REG FEE \$33.00

GOV SER TAX	\$26.00	PERSONALIZED	\$20.00
-------------	---------	--------------	---------

SUP GS TAX	\$6.00
------------	--------

TOTAL FEES \$85.00

CENTRAL SERVICES & RECORDS DIVISION
555 WRIGHT WAY
CARSON CITY, NV 89711-0725

Mandatory Insurance Verification

Per NRS 485.185, every owner of a motor vehicle registered or required to be registered in this state, shall continuously provide insurance from an insurance company licensed to do business in Nevada. Trailers are exempt.

*Address changed? If so, show correct address below.

SMOG-EMISSIONS CHECK - REQUIRED

JUNGE WILLIAM CHARLES
5409 CONTRERA CT
LAS VEGAS NV 89120-2062

