

No. _____

IN THE
Supreme Court of the United States

LEAH GILLIAM,

Petitioner,

v.

DAVID GERREGANO, COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF REVENUE, AND
JONATHAN SKRMETTI, TENNESSEE
ATTORNEY GENERAL,

Respondents.

**APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH FOR AN
EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF TENNESSEE**

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To the Honorable Brett M. Kavanaugh, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Leah Gilliam respectfully requests that the time to file her Petition for Writ of Certiorari in this matter be extended 60 days, up to and including July 26, 2025. The Tennessee Supreme Court issued its opinion on February 26, 2025. (Appendix ("App.")). Absent an extension, the Petition for Writ of Certiorari would be due on May 27, 2025. Petitioner files this Application more than 10 days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1257(a). Respondents, through their counsel, do not oppose this request.

Background

Tennessee allows car owners to create a personalized license plate. For a small fee, motorists may select three to seven letters or numbers that express the message others will see on their car. As the Tennessee Department of Revenue's website explained, "[i]n Tennessee, license plates can be personalized with *your own unique message*." Many other states have identical programs.

States also routinely censor this private speech on license plates in arbitrary ways. Arizona has allowed "JESUSNM" but prohibited "JESUSRX" as well as "NOGOD." New York has banned "JESUS" but allowed "CHRIST." Vermont banned "JN36TN," a reference to John 3:16. Ohio banned a plate that was critical of President Biden: "LET'S GO B" (a reference to the "Let's Go Brandon" chant); Texas revoked a plate that was critical of President Trump: "JAIL 45." And in Michigan, college football fans cannot request a plate that says "OSUSUCKS."

Tennessee is no stranger to this censorship of private speech. Petitioner Leah Gilliam is an avid video gamer and an astronomy buff. In 2010, she applied for the personalized plate “69PWNDU,” a message that, while perhaps incomprehensible to most, was understandable to people who share her interests. “69” was a reference to the 1969 moon landing. “PWND,” as Gilliam explained in her application for the plate, is an expression familiar in the video gaming community that means to be defeated or dominated.

The Department of Revenue approved Gilliam’s application and issued her requested plate. She displayed the plate on her car for the next 11 years, during which the Department received no complaints about it. Then, in 2021, the Department’s chief of staff, Justin Moorhead, received a text message on his cellphone that included a photograph of Gilliam’s plate. Soon after, the Department informed Gilliam that it was revoking her plate because it was offensive and therefore in violation of Tenn. Code. § 55-4-210(d)(2).

Gilliam filed this lawsuit. She alleged that section 55-4-210(d)(2) is inconsistent with the First Amendment because it authorizes the Department of Revenue to discriminate on the basis of viewpoint. A Tennessee Chancery Court held that personalized plates are government speech, not private speech, and that the First Amendment thus does not restrict the state’s power to discriminate on the basis of viewpoint. The Tennessee Court of Appeals reversed. Applying the three-factor test in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022), and *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), that court concluded that personalized license plates are private speech, not government speech.

The Tennessee Supreme Court applied the same three-factor test and reached the opposite conclusion, reasoning that each factor weighed in favor of finding that personalized plates are government speech. This holding aligned with two courts which agree that the messages on personalized license plates are government speech. See *Commissioner of the Indiana Bureau of Motor Vehicles v. Vawter*, 45 N.E.3d 1200, 1204-07 (Ind. 2015); *Odquina v. City and County of Honolulu*, 2024 WL 1885857, *6-*9 (D. Haw. 2024). But it conflicts with many others that agree with the Tennessee Court of Appeals. See *Mitchell v. Maryland Motor Vehicle Admin.*, 148 A.3d 319, 325-27 (Md. 2016); *Higgins v. Driver & Motor Vehicle Servs. Branch*, 72 P.3d 628, 632 (Or. 2003); *Overington v. Fisher*, 733 F. Supp. 3d 339, 343-47 (D. Del. 2024); *Carroll v. Craddock*, 494 F. Supp. 3d 158, 165-66 (D.R.I. 2020); *Ogilvie v. Gordon*, 2020 WL 10963944, *2-*5 (N.D. Cal. 2020); *Kotler v. Webb*, 2019 WL 4635168, *3-*8 (C.D. Cal. 2019); *Hart v. Thomas*, 422 F. Supp. 3d 1227, 1231-34 (E.D. Ky. 2019); *Matwyuk v. Johnson*, 22 F. Supp. 3d 812, 822-24 (W.D. Mich. 2014); *Bujno v. Commonwealth of Va., Dep't of Motor Vehicles*, 2012 WL 10638166, *4-*5 (Va. Cir. Ct. 2012). See also *Montenegro v. New Hampshire Div. of Motor Vehicles*, 93 A.3d 290, 294 (N.H. 2014) (assuming without deciding that the messages on personalized plates are private speech); *Byrne v. Rutledge*, 623 F.3d 46, 53-61 (2d Cir. 2010) (treating the messages on personalized plates as private speech without addressing whether they are government speech); *Perry v. McDonald*, 280 F.3d 159, 166-73 (2d Cir. 2001) (same); *Lewis v. Wilson*, 253 F.3d 1077, 1079-82 (8th Cir. 2001) (same); *Martin v. State, Agency of Transp. Dep't of Motor Vehicles*, 819 A.2d 742, 746-49 (Vt. 2003) (same); *Morgan v. Martinez*, 2015

WL 2233214, *8-*9 (D.N.J. 2015) (same); *Dimmick v. Quigley*, 1998 WL 34077216, *3-*6 (N.D. Cal. 1998) (same); *Pruitt v. Wilder*, 840 F. Supp. 414, 417-18 (E.D. Va. 1994) (same).

The courts on both sides of the split have recognized that this disagreement is caused by their divergent interpretations of this Court's government speech cases, not by any differences in how states issue personalized license plates. *Mitchell*, 148 A.3d at 328 ("we reject the *Vawter* court's reasoning"); *Carroll*, 494 F. Supp. 3d at 167 ("I reject as wholly unpersuasive the reasoning of *Comm'r of Indiana Bur. of Motor Vehicles v. Vawter*, 45 N.E.3d 1200, 1210 (Ind. 2015), an apparent outlier holding vanity plates government speech."); *Hart*, 422 F. Supp. 3d at 1232 ("this Court is not persuaded by the analysis in *Vawter*"); *Odquina*, 2024 WL 1885857 at *9 (explaining that the court "was not persuaded by the rationale" of the cases finding that personalized plates are private speech). This is equally true of the Tennessee Supreme Court below, which "acknowledge[d] that most of the courts that have considered whether personalized license plates are government speech after *Walker* have reached a contrary conclusion." App.18. This case presents an ideal vehicle to resolve that split of authority.

Reasons for Granting an Extension of Time

The time within which to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. Petitioners' Counsel of Record, John J. Bursch, has been newly retained for cert.-stage proceedings in this case and needs additional time to familiarize himself with the record and proceedings below.

2. Mr. Bursch also has had and will continue to have numerous litigation deadlines before and after May 27, 2025, when the Petition is due, including but not limited to the following:

- Opening merits brief due on May 7, 2025, in the U.S. Court of Appeals for the Ninth Circuit, *NIFLA v. Bonta*, Case No. 25-2287.
- Opening merits brief due on May 28, 2025, in the U.S. Court of Appeals for the Seventh Circuit, *NIFLA v. Treto*, Case Nos. 25-1655, 25-1657.
- Merits reply brief on May 29, 2025, in the U.S. Court of Appeals for the Second Circuit, *University at Buffalo Young Americans for Freedom v. University at Buffalo Student Association*, Case No. 25-140.
- Opening merits brief due on May 30, 2025, in the U.S. Court of Appeals for the Second Circuit, *Wuoti v. Winters*, Case No. 25-678.
- Opening merits brief due on June 5, 2025, in the U.S. Court of Appeals for the Second Circuit, *Vitsaxaki v. Skaneateles Central School District*, Case No. 25-952.
- Merits opening brief and joint appendix due on June 6, 2025, in this Court, *Chiles v. Salazar*, Case No. 24-539.
- And a petition for certiorari due in July 21, 2025, in this Court, *Kane v. City of New York*, No. 24A1081.

3. As noted above, the Tennessee Supreme Court's decision acknowledges that there is a substantial split of authority over whether vanity license plates are private speech or government speech.

4. As a result of these conflicts, a significant prospect exists that this Court will grant certiorari and reverse the Tennessee Supreme Court.

5. No meaningful prejudice would arise from granting the extension. Counsel for Respondents has indicated that Respondents do not oppose this request.

Conclusion

For the foregoing reasons, Petitioner hereby requests that an extension of time to and including July 26, 2025, be granted within which Petitioner may file a petition for a writ of certiorari.

Respectfully submitted,



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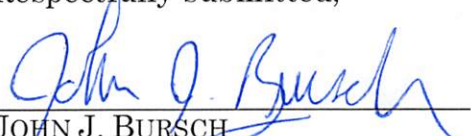
May 13, 2025

CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court rule 22.2 and 29.3:

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Respectfully submitted,



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