

No. 25-107

In the Supreme Court of the United States

LEAH GILLIAM, *Petitioner*

v.

DAVID GERREGANO, COMMISSIONER,
TENNESSEE DEPARTMENT OF REVENUE, ET AL.

On Petition of Writ of Certiorari to the
Supreme Court of Tennessee, Middle Division

BRIEF OF *AMICUS CURIAE*
PROTECT THE FIRST FOUNDATION
SUPPORTING PETITIONER

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INTRODUCTION, SUMMARY, AND INTERESTS OF *AMICUS CURIAE*¹

When states invite vehicle owners to pay for personalized license plates, they operate a monopoly over a particular place to express a message. But, contrary to the decision below, Tennessee’s monopoly over the forum neither means that anyone who speaks in that forum is expressing the government’s viewpoint nor that the government is endorsing every viewpoint it allows. The message, while in the government’s forum, is not the government’s speech. The Court should grant review to reverse the Tennessee Supreme Court’s opposite holding.

Review is particularly warranted because, in addition to being wrong, the holding below dangerously expands the already questionable government-speech doctrine. Allowing the government to rebrand private speech as its own wrongly lets the government avoid First Amendment scrutiny and “silence or muffle” private speech. *Matal v. Tam*, 582 U.S. 218, 235 (2017). For this reason, the government cannot transform private speech in a limited forum through heavy-handed censorship and then claim ownership of the speech it deigns to permit.

That Tennessee did so here troubles *amicus* Protect the First Foundation (“PT1”), a nonprofit organization that advocates for protecting First

¹ This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel has made a monetary contribution toward the brief’s preparation or submission. All parties received timely notice of *amicus*’ intent to file this brief.

Amendment rights. PT1 is concerned with the spread of expansive understandings of government speech because of the doctrine's tendency to silence what would otherwise be protected third-party expression. Here, PT1 agrees that the decision below wrongly treated personalized plates as government speech.

PT1 makes two further points. First, when public resources are used to fund viewpoint-restricted speech—whether government-favored private speech or the government's own speech—taxpayers are forced to fund such speech, triggering First Amendment scrutiny. This Court has—in the union context—recognized a First Amendment harm from compelled financial support for speech. This case is a clean vehicle for the Court to recognize that the same principle applies to viewpoint-discriminatory compelled subsidization of government speech.

Second, many errors driving certain applications of the government-speech doctrine come from the misapplication of this Court's public-forum precedents. Here, personalized license plates are a limited public forum—not a means for the government to express or quash ideas. And since viewpoint discrimination is forbidden in public forums, the government violated the First Amendment when it retracted a license plate it had approved a decade before after the government's—not the speaker's—view changed. This case presents a clean vehicle to resolve the conflict and confusion between this Court's government-speech and public-forum cases. For those reasons too, this Court should grant review and reverse.

STATEMENT

More than a decade ago, Petitioner Leah Gilliam paid to express a message on her license plate referencing the 1969 lunar landing and using video-game slang—“69PWNDU.” Pet.41a. The Tennessee Department of Revenue approved her requested plate, and she displayed it on her car for years without incident. Pet.8a. Things changed after someone who passed Gilliam on the road teased the Department of Revenue’s Chief of Staff for issuing Gilliam’s license plate. Pet.42a. In response to that message, the Department revoked Gilliam’s plate and absurdly claimed—for the first time—that it was offensive to good taste and decency. Pet.8a.

Gilliam sued, alleging that the Department’s decision to revoke her license plate was unlawful viewpoint discrimination. Pet.8a-9a. Ultimately, the Tennessee Supreme Court reasoned that license plate numbers were little more than “Tennessee’s way of communicating identifying information about the vehicle to law enforcement and the public” that everyone perceived as government speech. Pet.25a-26a. To the court, those facts, coupled with the fact that Tennessee had historically exercised significant control over license plates, meant that the message that Gilliam had individually crafted and proudly displayed for years on her license plate was never hers at all, but was instead Tennessee’s. Pet.29a-33a.

ADDITIONAL REASONS TO GRANT REVIEW

I. The Court Should Reconsider Whether Viewpoint-Discriminatory and Compelled Support for “Government” Speech Is Free from First Amendment Scrutiny.

As Petitioner shows, the Tennessee Supreme Court dangerously expanded the government-speech doctrine in conflict with existing precedent. Pet.19-26. But even under a broader view of what constitutes government speech, the Petition should still be granted because this case—together with the pending petition in *Cambridge Christian School, Inc. v. Florida High School Athletic Association, Inc.*, No. 24-1261—presents the Court with an ideal vehicle to reconsider its flawed prior holdings that government speech falls entirely outside the First Amendment. While the government has substantial power to act in ways opposed by taxpayers, *speech* is constitutionally different than conduct, as the very existence of the First Amendment confirms.

1. This Court has held that government speech falls outside the First Amendment. See *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015). As discussed below, that broad holding is in tension with this Court’s repeated recognition of the First Amendment constraints on compelled support for viewpoint-discriminatory speech. Whether the government compels viewpoint-discriminatory support for the speech of favored third parties that toe the government line, or hires such interlocutors directly, makes no constitutional difference. This case presents a clean vehicle to resolve

that tension. And getting that question right is a matter of utmost importance, since “[f]undamental free speech rights are at stake.” *Janus v. American Fed’n of State, Cnty., Mun. Emps.*, 585 U.S. 878, 886 (2018).

That speech rights are implicated by the government-speech doctrine cannot seriously be questioned. When the government speaks, it necessarily does so with compelled funds—taxes and, as here, fees for registering a vehicle. Sometimes, speech is inevitable, such as when the government is speaking to fulfill necessary constitutional or statutory duties. That would include agency communications and similar affirmative statements disseminated to inform the public about its activities and services, notices of proposed and finalized rules, and publishing laws that bind the public. Likewise, advocacy on behalf of the United States in international affairs or in court is, of course, integral to government conduct. But viewpoint-based advocacy within those confines is permissible not because the First Amendment does not *apply*, but because such collective speech is *necessary* and germane to legitimate government functions.²

A problem arises when, outside of the circumstances addressed above where the government must speak to fulfill its core functions and constitutional obligations, the government uses

² By contrast, speech by individual politicians—such as when campaigning for reelection or when speaking or debating in Congress—is private political speech protected, rather than constrained, by the First Amendment. See *FEC v. Cruz*, 596 U.S. 289, 303-304 (2022).

taxpayer funds to further contested—and often partisan—viewpoints. This Court’s cases set the overarching baseline principle that “no official, high or petty, can * * * force citizens to confess by word or act” ideas with which they disagree. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Indeed, for decades, the Court has recognized that the right to speak includes both the right *not* to speak, *Wooley v. Maynard*, 430 U.S. 705, 714 (1977), and the right not to be “compelled to *subsidize* the propagation of [opposed] political or ideological views,” *Chicago Tchrs. Union v. Hudson*, 475 U.S. 292, 305 (1986) (emphasis added). Indeed, the Founders considered any system that compels a person’s “propagation of opinions which he disbelieves” to be “tyrannical.” *Id.* at 305 n.15 (quoting Irving Brant, *James Madison: The Nationalist 1780-1787*, at 354 (1948)). In recognition of that principle, this Court most recently held that “[c]ompelling a person to subsidize the speech of other *private* speakers” is a “significant impingement on First Amendment rights.” *Janus*, 585 U.S. at 893 (quoting *Knox v. Service Emps. Int’l Union*, 567 U.S. 298, 310-311 (2012)).

2. Yet this Court, through the government-speech line of cases, has carved out a monumental exception to the First Amendment’s protection against compelled support for speech. By using compelled public funds to express a selective perspective on matters of controversy, the government forces many taxpayers to pay to advance political and social viewpoints with which they disagree—the very harm that this Court considered tyrannical when addressed in the public-union context. There is no principled

reason for this distinction. Elsewhere the Court has recognized that government restrictions on or compelled support for speech are constitutionally different than restrictions on or compelled support for conduct. See *United States v. O'Brien*, 391 U.S. 367, 375-376 (1968). So, too, government-compelled support for its own viewpoint-discriminatory speech is constitutionally different than compelled support for government conduct.

The problems posed by such compelled speech are particularly stark in the context of partisan messages issued by the government using public funds and facilities. If the White House were to fund an ad campaign with congressionally appropriated funds to urge Americans to push their elected leaders to support controversial legislation, it would be clear that the government was using compelled taxes or taxpayer-funded property to express a political message.³ The same would be true if California were to use state funds to erect a giant billboard supporting Governor Gavin Newsom's attempt to redistrict California's congressional districts—or perhaps supporting his anticipated future run for president. Such compelled support for overtly partisan political speech that does not serve any governmental purpose cannot be squared with the First Amendment. The First Amendment and, indeed, the bottom-up structure of the Constitution, do not tolerate such top-

³ *E.g.*, U.S. Dep't of Hous. & Urb. Dev. (Oct. 1, 2025, at 1:29 PM), <https://www.hud.gov/#openModal> [<https://perma.cc/NYY9-C6M4>] (“The Radical Left in Congress shut down the government.”).

down use of compelled public money to manipulate the public through targeted government propaganda.

Free speech concerns are also implicated even where government speech is less clearly partisan. As this Court has recognized, “the people lose when the government is the one deciding which ideas should prevail.” *National Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 772 (2018). That is just what the government is doing when it uses taxpayer funds to express *ideological* viewpoints or positions on political questions. When redirecting public resources to support speech on one side of divisive issues, the government forces those who don’t espouse its chosen message to fund a viewpoint they oppose. Put differently, viewpoint-based government speech on ideological issues—subsidized by the taxpayer—compels all taxpayers to speak. Such efforts have the self-evident goal of using the compelled funding and machinery of the State to manipulate public opinion.

3. Given this reality, the Court was incorrect to suggest in past cases that “the democratic electoral process” provides an adequate check on viewpoint-based government speech. See *Walker*, 576 U.S. at 207. Because citizens may “influence the choices of a government,” the argument goes, they do not need First Amendment protection from government speech that runs counter to their political, social, or religious beliefs. See *ibid.* Such an argument proves too much, however, and could be applied to all infringements of the First Amendment. And, again, it fails to recognize that *speech*—whether restricted, compelled or subsidized by involuntary funding—is definitionally and constitutionally different from conduct.

The First Amendment was adopted precisely because the Founders “[r]ecogniz[ed] the occasional tyrannies of governing majorities,” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (quoting *Whitney v. California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring)), and the unique dangers and distortions of government manipulation of speech and other forms of expression and belief. It is poor comfort to tell a disfavored minority to take to the ballot box or public protests to influence the government to change the viewpoints it favors. Such minorities face a “very real threat” that the government may, as with the license plate here, exclude that minority from speaking in a seemingly public forum created by the government. Cf. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2361 (2025).

That general threat is particularly salient here given the small size of the forum—no one other than Petitioner is likely to care about the message Petitioner wants to express on her own car. And since there are ever-expanding claims that government ownership of a forum or of a channel of communication renders all speech using that forum or channel “government speech” that can freely be selected or restricted based on viewpoint, Petitioner’s claims are likely to go unheard—unless this Court recognizes that it is protected irrespective of its broader political traction. So long as the members of the minority remain politically weak, they will be coerced to support speech with which they fundamentally disagree. Properly understood, the First Amendment surely has something to say when the government expresses viewpoints that are not held—and may even

be vehemently opposed—by those forced to subsidize it.

4. Recognizing that the First Amendment has something to say vis-à-vis government speech would not cripple the government’s ability to operate. Contrary to this Court’s prior holdings, a *carte blanche* carve-out of government speech from the First Amendment’s protection does not follow from the government’s greater freedom to regulate or support *conduct*.⁴ Nor is First Amendment scrutiny always fatal to viewpoint-neutral support for speech or for incidental speech support that does not unduly burden First Amendment rights. See *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 444 (2015) (recognizing that “cases do arise” where speech restrictions survive strict scrutiny).

To the contrary, even if the First Amendment applied to government speech, the government could still speak by providing information germane to its policies and programs—publishing laws, regulations, and guidance, for example—without treading into the dangerous territory of viewpoint-based advocacy or propaganda. And any challenge to whether government speech is germane to the government’s legitimate functions could be addressed the same way as in this Court’s other compelled-speech cases—by

⁴ The First Amendment, of course, does not prohibit the government from compelling or restricting *behaviors*. See *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011). Laws may, for example, require citizens to pay taxes to support government operations and spending, to adhere to speed limits, to pay for roads and garbage collection, and to seek licenses for driving or hunting.

“employ[ing] exacting scrutiny, if not a more demanding standard.” *Janus*, 585 U.S. at 925.

In any such inquiry, familiar First Amendment principles would apply: “[T]he State * * * must affirmatively establish the reasonable fit [the Court] require[s].” *Board of Trs. State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989). Under that standard, any speech from the government would have to be “narrowly tailored to the interest it promotes, even if it is not the least restrictive means of achieving that end.” *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 609-610 (2021). Requiring the government to prove that its speech is narrowly tailored to enable its legitimate conduct would be entirely consistent with this Court’s longstanding recognition that, “[i]n the First Amendment context, fit matters.” *Id.* at 609 (quoting *McCutcheon v. FEC*, 572 U.S. 185, 218 (2014)).⁵ And it would end the anomaly presented by the current government-speech doctrine, that is, that the First Amendment does not even apply when the government compels support to further its own viewpoints as opposed to the government-favored viewpoints of third parties.

In short, whenever the government expresses—or restricts—a particular viewpoint, it compels support for speech. The same standards that apply in other compelled-speech and subsidy cases should thus apply to compelled subsidies of viewpoints expressed through government speech.

⁵ Manipulating public opinion to support a legislative agenda, however, is a squarely illegitimate government interest even if the proposed law or action is itself legitimate.

II. The Court Should Also Review Whether the Government Is Speaking When It Merely Facilitates Private Speech.

Even if this Court does not fully reconsider the First Amendment’s role in policing compelled government speech, review would still be warranted to resolve the conflict and confusion between this Court’s government-speech cases and its public-forum cases.

1. Many of the compelled-speech harms addressed above could be avoided altogether if this Court were to endorse Justice Alito’s correct conclusion that the government-speech doctrine does not apply when “the government is * * * merely facilitating private speech” and is not “actually expressing its own views.” *Shurtleff v. City of Boston*, 596 U.S. 243, 263, 266 (2022) (Alito, J., concurring). Applying that standard, rather than the more malleable multi-factor standard for determining government speech established in other cases, see *id.* at 252 (majority op.), would have made this case easy.⁶ The State of Tennessee would not itself have been speaking had it continued to allow the vehicle owner to use the limited public forum it created to express the harmless message she paid to express over a decade ago. Rather, it would have been refusing to discriminate based on viewpoint in a forum that facilitates diverse speech.

⁶ Indeed, the variable test that includes “the extent to which the government has actively shaped or controlled the expression,” *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022), inverts First Amendment fundamentals by suggesting that greater censorship and viewpoint discrimination would circumvent, rather than violate, the First Amendment.

2. Replacing the current government-speech factors—which, as three Justices have shown, are “an uncertain guide to speaker identity” anyway, *id.* at 266 (Alito, J., concurring)—with an objective speaker-focused view of government speech would neither meaningfully impinge the government’s ability to operate nor force the government to allow all speech. Rather, when private actors seek to use government property as a platform for their speech, this Court can (and should) instead rely on its public-forum precedents to identify means of allocating limited government resources compatible with the First Amendment.

To be sure, non-public forums would remain, by far, the “largest class of government property.”⁷ Thus usually, the government would be allowed to “preserve the property under its control for the use to which it is lawfully dedicated”—even if that means not allowing *any* private speech on the property. *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 46 (1983) (quoting *USPS v. Council of Greenburgh Civic Ass’ns*, 453 U.S. 114, 129-130 (1981)). On the coin’s other side, public streets, sidewalks, and parks would remain open for the exercise of First Amendment rights since they are “traditional public fora * * * for expressive activity regardless of the government’s intent.” *Arkansas Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 678 (1998). So, too, would any property the government has “intentionally opened up for” the expression of private views. *Pleasant Grove City v.*

⁷ Daniel W. Park, *Government Speech and the Public Forum: A Clash Between Democratic and Egalitarian Values*, 45 Gonz. L. Rev. 113, 120 (2010).

Summum, 555 U.S. 460, 469 (2009); *Shurtleff*, 596 U.S. at 256-257.

Treating private speech as private—rather than assigning it to the government—would thus, at most, continue to constrain the government’s ability to regulate speech in limited public forums, which the government can reserve for “certain groups or for the discussion of certain topics.” *Walker*, 576 U.S. at 215 (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). In such forums, the government cannot engage in “viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum’s limitations.” *Rosenberger*, 515 U.S. at 830; accord *Matal*, 582 U.S. at 243 (when “a unit of government creates a limited public forum for private speech,” “viewpoint discrimination is forbidden” (cleaned up)). And the Court has used viewpoint discrimination “in a broad sense,” repeating “time and again” that when the government prohibits ideas ““merely because the ideas are themselves offensive to some of their hearers[,]” it has engaged in viewpoint discrimination. *Matal*, 582 U.S. at 243-244 (quoting *Street v. New York*, 394 U.S. 576, 592 (1969)). Allowing an expanded application of the government-speech doctrine to convert government-sponsored forums into government-controlled vehicles for propaganda would vitiate these fundamental First Amendment principles.

3. Applying those principles, what the State did here by inviting vehicle owners to pay for personalized license plates was “to create * * * a limited public forum. It has allowed state property” (the

alphanumeric codes on state license plates) “to be used by private speakers according to rules that the State prescribes.” *Walker*, 576 U.S. at 234 (Alito, J., dissenting).

Although the State was not required to approve every requested alphanumeric code, its decision to accept almost every requested combination but to rescind Petitioner’s registration when the State’s viewpoint changed ran afoul of the First Amendment’s prohibition against viewpoint discrimination. By applying the government-speech doctrine, the Tennessee Supreme Court allowed the State to discriminate against Petitioner’s viewpoint in a way that—properly applied—this Court’s public-forum cases would not have allowed.

CONCLUSION

The Court should grant the Petition either to clarify that government speech must still satisfy some level of First Amendment scrutiny or to establish that the government is not speaking when it merely facilitates private speech by opening up its property as a platform for that speech. The First Amendment deserves as much.

Respectfully submitted,

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