

No. 25-107

IN THE
Supreme Court of the United States

LEAH GILLIAM,

Petitioner,

v.

DAVID GERREGANO, COMMISSIONER, TENNESSEE DEPART-
MENT OF REVENUE, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF TENNESSEE

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Are the alphanumeric registration characters on state-issued, personalized license plates government speech?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner (plaintiff-appellee below) is Leah Gilliam.

Respondents (defendants-appellants below) are David Gerregano, in his official capacity as Commissioner of the Tennessee Department of Revenue, and Jonathan Skrmetti, in his official capacity as Attorney General of Tennessee.

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF THE CASE	4
A. Legal Background	4
B. Tennessee License Plates	7
C. Factual and Procedural Background	9
REASONS FOR DENYING THE PETITION	12
I. Further Percolation Is Needed	12
II. Gilliam’s Attempts to Inflate the Importance of the Issue Fail.	17
A. Another government-speech case on license plates hardly seems worth this Court’s attention.....	17
B. This case is a bad vehicle for developing the government-speech doctrine.....	20
III. The Decision Below Is Correct.	22
CONCLUSION	35

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Allen v. Cooper</i> , 589 U.S. 248 (2020)	20
<i>Am. Const. Co. v. Jacksonville, T. & K.W. Ry. Co.</i> , 148 U.S. 372 (1893)	19
<i>Arizona v. Evans</i> , 514 U.S. 1 (1995)	17
<i>Bernstein v. U.S. Dep't of State</i> , 922 F. Supp. 1426 (N.D. Cal. 1996)	26
<i>Box v. Planned Parenthood</i> , 587 U.S. 490 (2019)	13, 17
<i>Carroll v. Craddock</i> , 494 F. Supp. 3d 158 (D.R.I. 2020)	13
<i>Catholic Charities Bureau, Inc. v. Wisc. Labor & Indus. Review Comm'n</i> , 605 U.S. 238 (2025)	19
<i>Choose Life Ill., Inc. v. White</i> , 547 F.3d 853 (7th Cir. 2008)	17
<i>Comm'r of the Ind. Bureau of Motor Vehicles v. Vawter</i> , 45 N.E.3d 1200 (Ind. 2015)	13, 18, 22, 30, 31, 34

<i>Forsyth v. City of Hammond</i> , 166 U.S. 506 (1897)	17
<i>Hart v. Thomas</i> , 422 F. Supp. 3d 1227 (E.D. Ky. 2019)	13
<i>Higgins v. Driver & Motor Vehicle Servs. Branch</i> , 72 P.3d 628 (Or. 2003)	14
<i>Kahn v. DMV</i> , 16 Cal. App. 4th 159 (1993)	18, 24
<i>Kimble v. Marvel Ent., LLC</i> , 576 U.S. 446 (2015)	21
<i>Kotler v. Webb</i> , No. 19-cv-2682, 2019 WL 4635168 (C.D. Cal. Aug. 29, 2019)	13
<i>M J Nichols Co. v. Thompson</i> , No. 24-cv-566 (W.D. Wis.)	13
<i>Maslenjak v. United States</i> , 582 U.S. 335 (2017)	3
<i>Matal v. Tam</i> , 582 U.S. 218 (2017)	3, 18, 19, 22, 27-29, 31, 35
<i>Matwyuk v. Johnson</i> , 22 F. Supp. 3d 812 (W.D. Mich. 2014)	13
<i>Mech v. School Bd. of Palm Beach Cnty.</i> , 806 F.3d 1070 (11th Cir. 2015)	25, 34
<i>Mitchell v. Md. Motor Vehicle Admin.</i> , 148 A.3d 319 (Md. 2016)	10, 14, 15

<i>Montenegro v. N.H. Div. of Motor Vehicles</i> , 93 A.3d 290 (N.H. 2014).....	14
<i>Odquina v. Honolulu</i> , No. 22-cv-407, 2022 WL 16715714 (D. Haw. Nov. 4, 2022).....	30
<i>Ogilvie v. Gordon</i> , No. 20-cv-1707, 2020 WL 10963944 (N.D. Cal. July 8, 2020).....	13
<i>Overington v. Fisher</i> , 733 F. Supp. 3d 339 (D. Del. 2024).....	13
<i>Perry v. McDonald</i> , 280 F.3d 159 (2d Cir. 2001)	18
<i>Pleasant Grove City v. Summum</i> , 555 U.S. 460 (2009).....	4, 5, 11, 19, 23, 25, 27, 29-34
<i>Ramos v. Louisiana</i> , 590 U.S. 83 (2020)	21
<i>Shurtleff v. City of Boston</i> , 596 U.S. 243 (2022)	4, 5, 21, 22, 33, 34
<i>Sorrell v. IMS Health, Inc.</i> , 564 U.S. 552 (2011)	2, 14, 26
<i>Stanford v. Kentucky</i> , 492 U.S. 361 (1989)	31
<i>United States v. Ellison</i> , 462 F.3d 557 (6th Cir. 2006)	25

<i>United States v. Simpson</i> , 520 F.3d 531 (6th Cir. 2008)	7
<i>Universal City Studios v. Corley</i> , 273 F.3d 429 (2d Cir. 2001)	26
<i>Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council</i> , 425 U.S. 748 (1976)	26
<i>Walker v. Tex. Div., Sons of Confederate Veterans</i> , 576 U.S. 200 (2015)	1, 4-6, 11, 18, 20-26, 29-31, 33, 34
<i>Whateley v. Lackey</i> , 785 F. Supp. 3d 149 (W.D. Va. 2025)	13
<i>Women for Am. First v. Adams</i> , 2022 WL 1714896 (2d Cir. May 27, 2022)	28

Statutes

Tenn. Code Ann. § 55-4-101(a)(1)	7
Tenn. Code Ann. § 55-4-101(b)(1)	7
Tenn. Code Ann. § 55-4-103(b)(1)	7
Tenn. Code Ann. § 55-4-103(c)	7, 33
Tenn. Code Ann. § 55-4-110(a)	7
Tenn. Code Ann. § 55-4-110(b)	7, 22
Tenn. Code Ann. § 55-4-202	7

Tenn. Code Ann. § 55-4-203	7
Tenn. Code Ann. § 55-4-210	7, 33
Tenn. Code Ann. § 55-4-210(a)	8, 22, 33
Tenn. Code Ann. § 55-4-210(d)(1)	8
Tenn. Code Ann. § 55-4-210(d)(2)	8
Tenn. Code Ann. § 55-4-210(e)	8, 23
Tenn. Code Ann. § 55-4-214	7
Tenn. Code Ann. § 55-4-214(b)(2)	33
Tenn. Code Ann. § 55-5-117(a)	34
Tenn. Code Ann. § 55-5-117(a)(1)	9
Tenn. Code Ann. § 55-5-119(a)	9
1903 Mass. Acts, ch. 473	23
1998 Tenn. Pub. Acts, ch. 1063, § 1	18
Regulations	
Tenn. Comp. R. & Regs. 1320-08-01-.02	7, 8, 33
Other Authorities	
Kelso, R. Randall, <i>Clarifying Viewpoint Discrimination in Free Speech Doctrine</i> , 52 Ind. L. Rev. 355 (2019)	15

Norton, Helen, <i>Not for Attribution: Government's Interest in Protecting the Integrity of Its Own Expression</i> , 37 U.C. Davis L. Rev. 1317 (2004)	16
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INTRODUCTION

This Court does not need another license-plate case on government speech. One is plenty.

License plates are “government-mandated, government-controlled, and government-issued IDs.” *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 214 (2015). The State uses them to convey a simple message to the public and law enforcement: “Identify this vehicle by these alphanumeric characters.” Indeed, the whole point of a license plate is to convey this identifying information. And that is true whether the characters are requested or randomly generated. So whatever one thinks about other aspects of license plates, they “unquestionably contain *some* government speech (*e.g.*, the name of the State and *the numbers and/or letters identifying the vehicle*).” *Id.* at 222 (Alito, J., dissenting) (second emphasis added).

An example illustrates. Consider the commercial trucks that display a statement like the following: “How’s my driving? Call 1-800-123-4567. Truck No. ABC1234.” Everyone would agree that this qualifies as a communicative, identifying message. The vehicle owner is inviting the public to call the number listed to report on the driving of Truck No. ABC1234. When placed on state-issued license plates, registration numbers do the same thing. The State recognizes that the public may need to report a vehicle that drives recklessly, engages in criminal activity, is subject to an Amber Alert, etc. And it uses the registration number to tell the public: “Identify this vehicle by

ABC1234.” The conveyance of that “[i]dentifying information is speech for First Amendment purposes.” *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 570 (2011).

The petition asks this Court to hold that “the state is not expressing a message at all” through the alphanumeric characters on license plates. Pet. 25. If the State conveys no message, though, then why require license plates? The petition does not say. And it comes nowhere close to justifying this Court’s intervention.

No “deep, mature, and intractable” split exists. Pet. 19. Behind the buzzwords is a shallow 2-1 divide of state supreme courts—with the no-government-speech decision ruling for the State on other grounds. Far from identifying a “hopeless[] divide[],” Pet. 14, the petition relies almost exclusively on federal district court cases and decisions that *assumed*, without deciding, the question presented. That hardly creates a certworthy split. The reality is that not one U.S. Court of Appeals has weighed in on the question posed—and at least one Circuit is poised to do so.

This Court would benefit from further percolation. Despite Gilliam’s glib assertion that it is “obvious to anyone” that the registration numbers on vanity plates are purely private speech (at 23), the question is not that simple. License plates always convey *some* message from the State; they convey identifying information. Does the conveyance of that identifying information not qualify as speech? If not, why not? And if it does qualify, what’s the test when the same medium of expression simultaneously conveys both a government message *and* a different private message? How do courts apply the doctrine to that type of mixed speech? Neither the petition, nor the amici, nor the

no-government-speech decisions grapple with these basic issues. They simply appeal to gut-level intuition. That won't cut it on merits review. Rather than wade in with underdeveloped theories, the Court should allow further percolation to "yield insights (or reveal pitfalls)" with each position, and only then consider stepping in to "bless the best of it." *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment).

And to the extent the Court wants to provide clarity or adjust the government-speech inquiry, *Walker* makes this case a bad vehicle for doing so. Realistically, the Court would need to overrule *Walker* to rule against the State. At the very least, *Walker*'s reasoning would entangle this Court in stare decisis debates. And for no reason. There's no need to revisit what the Court said about license plates just ten years ago when the "holistic" government-speech inquiry already allows it to limit *Walker* to the government-ID context, as this Court did in *Matal v. Tam*, 582 U.S. 218, 238 (2017).

In any event, the case for government speech is *stronger* here than in *Walker*. In *Walker*, there was some question as to whether the State was expressing a message when it, for example, approved specialty plates supporting out-of-state universities and offered a RE/MAX license plate. But, here, there's no question that the State is expressing a message through its registration numbers—an identifying message. Surely, the part of a license plate (a government ID) that identifies the vehicle—the registration number—qualifies as government speech.

The Court should deny the petition.

STATEMENT OF THE CASE

A. Legal Background

The First Amendment “does not regulate government speech.” *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009). When the government speaks, it enjoys the freedom to “choose[] what to say and what not to say.” *Shurtleff v. City of Boston*, 596 U.S. 243, 251 (2022). Were it otherwise, “government would not work.” *Walker*, 576 U.S. at 207. The government could not “implement programs,” “formulate policies,” or speak to “the community” without control over its speech. *Shurtleff*, 596 U.S. at 251.

Sometimes, though, the government receives input “from private sources” when it “deliver[s] a government-controlled message.” *Summum*, 555 U.S. at 468. When private speakers are involved, it can be “difficult to tell whether a government entity is speaking” or merely “providing a forum for private speech.” *Id.* at 470. In other words, “[t]he boundary between government speech and private expression can blur when . . . a government invites the people to participate in a program.” *Shurtleff*, 596 U.S. at 252.

“[T]o determine whether the government intends to speak for itself,” this Court has engaged in a “holistic inquiry” “guide[d]” by several considerations. *Id.* Courts generally look to (1) whether the government has a “history” of using the medium at issue to convey a message; (2) whether the medium is “often closely identified in the public mind with the [government]”; and (3) whether the government exercises “direct control over the messages conveyed.” *Walker*, 576 U.S. at

209-14 (quotations omitted); *see also Shurtleff*, 596 U.S. at 252.

These considerations stem from *Summum*. There, the Court examined whether the government’s display of monuments in a city park constituted government speech. *Summum*, 555 U.S. at 464. Most of the monuments “were donated in completed form by private entities.” *Id.* at 472. And the Court recognized that “the thoughts or sentiments expressed by a government entity that accepts and displays [a monument] may be quite different from those of either its creator or its donor.” *Id.* at 476. But the Court specifically rejected the theory that “a [medium] can convey only one ‘message’—which is, presumably, the message intended by the [creator]—and that, if a government entity . . . does not formally embrace *that* message, then the government has not engaged in expressive conduct.” *Id.* at 474.

Instead, the Court focused on whether the speech contained a government message. And it did. The Court explained that “[g]overnments have long used monuments to speak to the public.” *Id.* at 470. When a government displays “privately financed and donated monuments . . . on government land,” *id.* at 470-71, those monuments likewise speak for the government, *even if* they convey a meaning “different” from the message conveyed by the monument’s donor or creator, *id.* at 476. Next, the Court found that “persons who observe donated monuments routinely—and reasonably—interpret them as conveying *some* message” on the government’s behalf. *Id.* at 471 (emphasis added). Finally, the Court concluded that the government had “effectively controlled the messages sent by

the monuments in the Park by exercising final approval authority over their selection.” *Id.* at 473 (quotations omitted). Given these considerations, the government-speech doctrine applied.

A few years later, in *Walker*, the Court applied similar considerations to conclude that the designs on Texas’s specialty license plates constituted government speech. 576 U.S. at 219. The Court held that (1) the government has a “history” of using “license plates” and “license plate designs” to “communicate” “messages”; (2) “license plate designs are often closely identified in the public mind with the [government]”; and (3) the government exercises “direct control over the messages conveyed.” *Id.* at 210-14 (quotations omitted). In the Court’s view, license plates serve as “government-mandated, government-controlled, and government-issued IDs that have traditionally been used as a medium for government speech.” *Id.* at 214. And given that traditional ID function, even designs on license plates qualified as government speech. *Id.*

Walker did not address Texas’s “personalization program,” which allowed “vehicle owner[s]” to “request a particular alphanumeric pattern for use as a plate number,” *id.* at 204, because no party before the Court had requested specific registration numbers. But even the dissent (taking a *narrower* view of the government-speech doctrine) recognized that “the numbers and/or letters identifying the vehicle” “unquestionably” qualify as “government speech.” *Id.* at 222 (Alito, J., dissenting).

B. Tennessee License Plates

To operate a vehicle on Tennessee roadways, Tennessee residents must register their vehicle and obtain a license plate issued by the Department of Revenue. Tenn. Code Ann. § 55-4-101(a)(1), (b)(1). Each license plate displays “Tennessee” (or an abbreviation thereof) and contains a unique “registration number” made up of no more than seven alphanumeric characters. *Id.* § 55-4-103(b)(1). The plate must be “attached on the rear of the vehicle” and “clearly visible” “at all times.” *Id.* § 55-4-110(a), (b), (c)(1). State law specifically dictates that “plates and the required numerals thereon . . . shall be of sufficient size to be readable from a distance of one hundred feet.” *Id.* § 55-4-103(c). These requirements allow for the “ready identification of motor vehicles traveling on Tennessee highways.” *United States v. Simpson*, 520 F.3d 531, 536 (6th Cir. 2008).

Vehicle owners who pay the normal vehicle-registration fee receive a license plate with a standard design and random registration number. For an additional fee, though, owners can obtain a “specialty” plate with a different design or request a “personalized” plate with specific alphanumeric characters as the registration number. *See* Tenn. Code Ann. §§ 55-4-202, -203, -210, -214; Tenn. Comp. R. & Regs. 1320-08-01-.02. That is, Tennessee allows drivers to pick their preferred identification number—i.e., their registration number. Tenn. Code Ann. § 55-4-214; Tenn. Comp. R. & Regs. 1320-08-01-.02.

Tennessee law restricts the registration numbers available for personalized plates. To ensure proper

identification of the vehicle, the Department of Revenue cannot issue a registration number that “conflict[s] with or duplicate[s] the registration numbers for any existing . . . vehicle registration plates.” Tenn. Code Ann. § 55-4-210(e). State law also prohibits the issuance of registration numbers that contain “any combination of letters, numbers or positions that may carry connotations offensive to good taste and decency or that are misleading.” *Id.* § 55-4-210(d)(2). And it prohibits the issuance of “any license plate commemorating any practice . . . contrary to the public policy of the state.” *Id.* § 55-4-210(d)(1). The application form for requesting a specific registration number states in bold: “Tennessee reserves the right to refuse to issue objectionable combinations.” Tr. Ex. 18.

Tennessee’s Department of Revenue contains a dedicated team—the Inventory Unit—that reviews each request for specific registration numbers. Tenn. Code Ann. § 55-4-210(a); Tenn. Comp. R. & Regs. 1320-08-01-.02. The five-person team reviews 80 to 100 applications per day to determine whether the requested “alphanumeric combinations comply with statutory requirements.” Pet.App.5a.

To facilitate that review, the Department “identified several objectionable categories including profanity, violence, sex, illegal substances, derogatory slang terms, and racial or ethnic slurs.” Pet.App.6a. The Inventory Unit consults several resources when evaluating applications, including a table of configurations that have been determined to carry connotations offensive to good taste and decency (the “Objectionable Table”). Pet.App.6a. The Objectionable Table includes references to profanity (e.g., “F***,” “B****,”

“S***”), violent acts (e.g., “MURDERG,” “RAPEME”), sexual acts (e.g., “IEATPUS,” “IEATA5S,” “IJERK,” “ORGY,” “LUV69”), illegal substances (e.g., “KOCABINE,” “GOTWEED,” “METH”), and racial slurs (e.g., “N*****,” “K***,” “NOJEWS”). Tr. Ex. 15. If a member of the Inventory Unit does not recommend approval, the request “‘moves up the chain’ for further review.” Pet.App.6a.

If the Inventory Unit erroneously approves a registration number, the Department may revoke the plate. Tenn. Code Ann. § 55-5-117(a)(1). The vehicle owner must then “immediately return the . . . revoked [license plate] to the department.” *Id.* § 55-5-119(a).

C. Factual and Procedural Background

In May 2021, the Department revoked Gilliam’s personalized license plate with the registration number “69PWNDU.” Pet.App.8a. In the Department’s view, the “69” combined with “PWNDU”—a term used by gamers when one player has “owned” or dominated another player—could be read to signify sexual acts or sexual domination. Pet.App.7a-8a.

Gilliam requested an administrative hearing to contest the Department’s revocation of her plate, claiming that the “69” in her plate referred to the year of the moon landing. Pet.App.7a-8a. Two weeks later, Gilliam filed a suit challenging the State’s offensiveness restriction under the Free Speech Clause, Due Process Clause, and void-for-vagueness doctrine. Pet.App.8a-9a.

Following discovery and a bench trial, a Tennessee trial court panel unanimously concluded that the reg-

istration numbers on Gilliam’s plate constituted government speech. Pet.App.81a-128a. The trial court explained that “the same facts on which the *Walker* Court concluded the Texas specialized license plates were government speech are present in this case of personalized plates.” Pet.App.111a. It noted *Walker*’s characterization of license plates as government IDs and emphasized that “the unique combination of numbers and letters that actually identify a vehicle”—i.e., the registration numbers—“are *even more* government IDs than the specialty plates in *Walker*.” Pet.App.126a (emphasis added).

The Tennessee Court of Appeals disagreed. Pet.App.38a-80a. In that court’s view, the State does not “communicate *any message at all*”—not even an identifying message—“through the alphanumeric configurations” on personalized plates. Pet.App.67a-68a (quoting *Mitchell v. Md. Motor Vehicle Admin.*, 148 A.3d 319, 326 (Md. 2016)) (emphasis added).

The Supreme Court of Tennessee unanimously reversed. Pet.App.1a-37a. The court, with Justice Sarah Campbell authoring, conducted a “holistic” inquiry that marched through each of the well-worn government-speech considerations. Pet.App.21a.

For the first consideration, the court found that “both the general history of registration numbers on license plates and the specific history of Tennessee’s personalized plates cut in favor of the State” because the alphanumeric registration characters are “Tennessee’s way of communicating identifying information about the vehicle to law enforcement and the public.” Pet.App.25a-26a. In doing so, the court rejected Gilliam’s contention that the State’s conveyance

of identifying information somehow doesn't qualify as speech. Pet.App.23a. And it recognized that "[d]ifferent speakers . . . may convey different things through the same medium of speech." Pet.App.24a (citing *Summum*, 555 U.S. at 476). As the Court explained, "[a] vehicle owner may request the combination 'YOLO' to express something about her life philosophy. But when the Department approves that personalized plate, it uses the combination to communicate something different—that the vehicle may be identified using that unique combination of characters." Pet.App.24a-25a.

For the second consideration, the court agreed with the State that "*Walker's* reasoning about the public perception of license plates applies equally here" because the "crux of *Walker's* analysis was its conclusion that license plates are, 'essentially, government IDs.'" Pet.App.26a-27a (quoting *Walker*, 576 U.S. at 212).

For the third consideration, the court observed that "the level of control the Department exercises over Tennessee's personalized license plates is materially similar to the level of control Texas exercised over its specialty plates." Pet.App.31a. In both instances, the State "has statutory authority to approve or deny applications for personalized plates and has actively exercised that authority." Pet.App.31a. So the "control factor also favors the State." Pet.App.33a.

The Supreme Court of Tennessee thus concluded that "personalized alphanumeric combinations on Tennessee's license plates are government speech." Pet.App.33a. The court acknowledged that other courts—mostly federal district courts—have reached

“a contrary conclusion.” Pet.App.34a. The court, nevertheless, noted that those courts “failed to appreciate that the alphanumeric combinations on license plates are the government’s way of *communicating identifying information about the vehicle*.” Pet.App.34a (emphasis added).

REASONS FOR DENYING THE PETITION

This case is not certworthy. The split is thin, the theories underdeveloped, and the factual context trivial. This case is also a bad vehicle for developing the government-speech doctrine. The Court has said enough about government speech and license plates. It should leave the Tennessee Supreme Court’s sound decision in place.

I. Further Percolation Is Needed.

Gilliam contends that a “deep, mature, and intractable” split “hopelessly divide[s]” courts over whether the alphanumeric characters on personalized license plates constitute government speech. Pet. 14, 19. Hyperbole. Any split is 2-1, at most 2-2—and includes no decisions from federal appellate courts. And the issues need further percolation, because the wrong side of the split (the courts disagreeing with the Tennessee Supreme Court) fail to engage with a crucial aspect of the inquiry: The reality that the alphanumeric characters on personalized plates can convey *both* a governmental message *and* a private message. Only by ignoring the mixed-speech aspect of the inquiry does Gilliam (and the cases she cites) hide the doctrinal Pandora’s Box underlying her position. This Court should allow lower courts to flesh out these issues—in the numerous pending cases—before weighing in.

1. Any split is shallow—and more nuanced than the petition lets on. Two state supreme court decisions have concluded that the alphanumeric characters on personalized plates constitute government speech—the decision below, Pet.App.1a-37a, and *Commissioner of the Indiana Bureau of Motor Vehicles v. Vawter*, 45 N.E.3d 1200 (Ind. 2015). While the Tennessee Supreme Court’s decision recognized that other courts have “reached a contrary conclusion,” Pet.App.34a, the petition oversells the number and nature of those decisions.

The petition’s reliance on a smattering of federal district court decisions is the first giveaway. *See* Pet. 14 (citing *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*, No. 20-cv-1707, 2020 WL 10963944, *2-5 (N.D. Cal. July 8, 2020); *Kotler v. Webb*, No. 19-cv-2682, 2019 WL 4635168, *3-8 (C.D. Cal. Aug. 29, 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)). Conflicting district court authority does not create a certworthy split. *See Box v. Planned Parenthood*, 587 U.S. 490, 493 (2019). And not one U.S. Court of Appeals has weighed in on the question presented. That not only highlights the shallow nature of the split, it also underscores the need for further percolation—percolation that will soon occur in the Fourth Circuit and perhaps the Seventh Circuit. *See Whateley v. Lackey*, 785 F. Supp. 3d 149 (W.D. Va. 2025), *appeal docketed*, No. 25-1751 (4th Cir. July 2, 2025); *see also M J Nichols Co. v. Thompson*, No. 24-cv-566 (W.D. Wis. filed Aug. 12, 2024).

Worse still, the petition resorts to cases that “*assume* that the messages on personalized plates are private speech.” Pet. 15 (emphasis added). It is a fundamental proposition—one so basic that it seems absurd to recite it—that courts do not resolve an issue by assuming it *arguendo*. So the fact that the New Hampshire Supreme Court, for example, “assume[d], without deciding,” that registration numbers qualify as private speech means absolutely nothing for purposes of establishing a split. *Montenegro v. N.H. Div. of Motor Vehicles*, 93 A.3d 290, 294 (N.H. 2014).

That leaves plaintiffs with just two appellate decisions treating registration numbers as private speech—one from Oregon and one from Maryland. *Mitchell*, 148 A.3d at 325-28; *Higgins v. Driver & Motor Vehicle Servs. Branch*, 72 P.3d 628, 632 (Or. 2003). For both, the government speech issue didn’t change the outcome. Maryland and Oregon upheld the constitutionality of an offensiveness restriction on license-plate registration numbers because it constituted a reasonable, viewpoint neutral restriction within a nonpublic forum. *Mitchell*, 148 A.3d at 334-39; *Higgins*, 72 P.3d at 634.

And Oregon’s decision appears to have been overcome by subsequent precedent. One, the decision issued before *Summum* and *Walker*—the two dispositive cases on this question. *See infra* 22-35. Two, the decision suggested that the conveyance of information isn’t speech. *Higgins*, 72 P.3d at 632 (limiting government speech to “advocacy”). But this Court has since rejected the view that the mere “disclos[ure]” and “dissemination of information” is not “speech within the meaning of the First Amendment.” *Sorrell*, 564 U.S.

at 570 (discussing “prescriber-identifying information”). And, as explained below, the fact that the government conveys information through license-plate registration numbers is critical to the government-speech inquiry.

So the divide distills down to a 2-1—or at most 2-2—split of state supreme courts, without a single federal appellate court weighing in. *See* R. Randall Kelso, *Clarifying Viewpoint Discrimination in Free Speech Doctrine*, 52 Ind. L. Rev. 355, 361 (2019) (identifying no federal court split and only noting a modest 1-1 state supreme court split). That’s a far cry from the “mature and deep split” the petition portrays. Pet. 18.

2. The shallow split comes with shallow reasoning on the no-government-speech side of the split. Virtually every court that has treated registration numbers as private speech has concluded that the registration numbers on personalized plates do not convey “any [State] message *at all*.” *See, e.g., Mitchell*, 148 A.3d at 326 (emphasis added). But they’ve never explained why. That gap in the courts’ reasoning blows past all the hard questions for the no-government-speech position.

The no-government-speech decisions never explain how a license plate—designed to give identifying information to the public and law enforcement—doesn’t convey *any* message. Do the no-government-speech courts think that communication must be expressive in nature to qualify as speech? Do the no-government-speech courts think that the conveying of identifying information differs from the conveying of technical information, as Gilliam argued below? Gilliam TN S.Ct.

Br. 40-41. If so, why? The lower courts (and the petition) don't say. They just ipse dixit conclude that personalized plates convey no government message. *But see infra* 22-26.

Nor do the no-government-speech cases explain what to do when the same medium—here, a registration number—conveys *both* a governmental message *and* a private message. In the State's view, *Summum* answers that question. *Infra* 24-25. But Gilliam argued otherwise below. Gilliam contended that even if there is *some* governmental message, the existence of a private message could negate the application of the government speech doctrine. Gilliam TN S.Ct. Br. 50-52. If that's right, what's the test? Does the government-speech doctrine toggle off anytime a private message purportedly overshadows the government's identifying message? Do courts decide whether mixed speech is more governmental or more private? How do you compare messages that differ in kind—e.g., the government's informational messages versus an individual's artistic messages? “The handful of courts that have acknowledged even the possibility of joint or simultaneous government/private speech have offered little guidance on the standards for evaluating government action in this context.” Helen Norton, *Not for Attribution: Government's Interest in Protecting the Integrity of Its Own Expression*, 37 U.C. Davis L. Rev. 1317, 1331 (2004).

With so many open questions and so few answers, Gilliam's proclamation that “everything that can be said has been said” is hard to take seriously. Pet. 28. The no-government-speech decisions and the petition fail to grapple with elementary questions. Instead,

they’ve taken a gut-level-intuition approach that assumes if some private message exists, a government message does not. Understandable. But wrong. *See infra* 22-26. And more importantly, the failure to engage with the strongest arguments for the government-speech position means that “further percolation” would “assist [the Court’s] review of this issue.” *Box*, 587 U.S. at 496 (Thomas, J., concurring). Allowing courts to confront—and perhaps reject—those arguments (which the State attempts to preview below) would “yield a better informed and more enduring final pronouncement by this Court.” *Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting).

II. Gilliam’s Attempts to Inflate the Importance of the Issue Fail.

The question presented does not call for this Court’s review. Whether vanity plates qualify as government speech is hardly a pressing “question[] of . . . public and national importance” warranting immediate intervention. *Forsyth v. City of Hammond*, 166 U.S. 506, 512 (1897). And *Walker* creates a litany of stare-decisis problems that make this a poor vehicle for developing the government-speech doctrine.

A. Another government-speech case on license plates hardly seems worth this Court’s attention.

Registration numbers have limited capacity to foster private expression. While they may convey some incidental private message, the “primary purpose” of registration numbers “is to identify the vehicle, not to facilitate the free exchange of ideas.” *Choose Life Ill., Inc. v. White*, 547 F.3d 853, 865 (7th Cir. 2008); *see also*

Kahn v. DMV, 16 Cal. App. 4th 159, 166 (1993). Tennessee license plates “are small and contain a maximum of [seven] characters, [so] they cannot realistically promote meaningful discourse, communication, and debate.” See *Vawter*, 45 N.E.3d at 1208; see also *Perry v. McDonald*, 280 F.3d 159, 167-68 (2d Cir. 2001). Thus, State control over registration numbers cannot meaningfully dampen private expression or drive ideas from the marketplace—particularly when the same message could far more efficiently be conveyed “on a bumper sticker right next to the plate.” *Walker*, 576 U.S. at 212-13.

Nor will “dangerous” consequences flow from allowing the State to maintain control over the 7-digit-or-less alphanumeric combination on state-owned, state-issued IDs. Pet. 5, 30 (quoting *Matal*, 582 U.S. at 235). For one, history refutes the notion that registration numbers somehow serve as the gateway to an ever-expanding approach to government speech. Tennessee has enforced the challenged restrictions *for decades* without triggering any widespread suppression of speech. See 1998 Tenn. Pub. Acts, ch. 1063, § 1.

And the reasoning of the decision below doesn’t open the government-speech floodgates. Gilliam states that “[u]nder the rationale adopted by the court below, business names, copyrights, patents, birth certificates, and real estate conveyances all qualify as government speech.” Pet. 30. But Justice Campbell’s thoughtful opinion held no such thing. It did not state that merely “affixing a government seal of approval” on an otherwise purely private message converts it into government speech. *Matal*, 582 U.S. at 235; see *infra* 27-29. Rather, it applied this Court’s familiar

government-speech precedents to hold that expression (1) conveying a governmental message (2) on government-owned property (3) that serves as a government ID (4) subject to State approval is government speech. Pet.App.22a-33a. Just reciting that narrow ruling—which hewed tightly to *Walker*’s reasoning—refutes Gilliam’s ginned up slippery-slope concerns. The decision below poses no lasting threat to public discourse.

Gilliam’s other attempts to inflate importance go nowhere. Some are just wrong: Gilliam states that, absent intervention, “a state could presumably allow plates that espouse Christianity but no other religions,” Pet. 13, despite *Summum*’s holding that “government speech must comport with the Establishment Clause,” 555 U.S. at 468; *see also Catholic Charities Bureau, Inc. v. Wisc. Labor & Indus. Review Comm’n*, 605 U.S. 238, 247-48 (2025). Other arguments are self-defeating: Gilliam claims that the question presented “can—and will—arise in many other[cases], because nearly every state” offers personalized plates. Pet. 27. But if that’s true, why should the Court take this case before *any* federal appellate courts have weighed in—especially with several pending cases in the lower federal courts raising this precise issue? *Supra* 13. Even if the Court thinks this is a certworthy question, it stands only to gain from waiting for those cases to percolate.

At bottom, while the petition tries to stir up the fears articulated in *Matal*, the vanity-plate issue teed up here is not one of “peculiar gravity and general importance.” *Am. Const. Co. v. Jacksonville, T. & K.W. Ry. Co.*, 148 U.S. 372, 383 (1893).

B. This case is a bad vehicle for developing the government-speech doctrine.

Even if this Court wants to provide clarity or tweak the government-speech inquiry, *Walker* makes this case a poor vehicle for doing so.

Realistically, this Court would have to overrule *Walker* to decide this case in Gilliam’s favor.¹ *Walker* held that license plates act as “government-mandated, government-controlled, and government-issued IDs . . . used as a medium for government speech.” 576 U.S. at 214. Surely, then, the part of those license plates that *identifies* the vehicle and conveys a government message—the registration number—qualifies as government speech. *See infra* Part III. “Overruling

¹ The petition suggests openness to the adoption of a new “method,” Pet. 25-26, and signals an intention to challenge *Walker*. Compare Pet. 13 (referring to the decision below as “demonstrably wrong”) with *Allen v. Cooper*, 589 U.S. 248, 267 (2020) (Thomas, J., concurring in part and concurring in the judgment) (holding that the Court is “obligated to” overrule precedent that is “demonstrably erroneous”). Amici are more explicit. See Brief for Simon Tam, et al. as Amici Curiae Supporting Petitioners, at 9 (floating that the Court could “overrule, modify, or preserve *Walker*”); see also Brief for Wisc. Inst. for Law & Liberty, et al. as Amici Curiae Supporting Petitioners, at 10-11 (calling for the narrowing of the government speech doctrine); Brief for Protect the First Foundation as Amici Curiae Supporting Petitioners, at 4 (asking the Court “to reconsider its flawed prior” government speech doctrine cases).

precedent,” though, “is never a small matter.” *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015). And the Court exercises its authority to reconsider its decisions “sparingly.” *Id.* at 465. This Court should reserve its capital for overruling cases for other, actually problematic First Amendment missteps.

Even if this case wouldn’t require outright reversal, *Walker*’s analysis would mire the Court in stare decisis debates. “In the American system of stare decisis,” courts are “bound to follow both the result *and the reasoning* of a prior decision.” *Ramos v. Louisiana*, 590 U.S. 83, 125 n.6 (2020) (Kavanaugh, J., concurring in part) (emphasis added). So at minimum, this Court would be saddled with significant aspects of *Walker*’s reasoning. For instance, *Walker* characterized license plates as “government IDs” and concluded that “issuers of ID typically do not permit the placement on their IDs of messages with which they do not wish to be associated.” 576 U.S. at 212 (cleaned up). It stated that “a person who displays a message on a Texas license plate likely intends to convey to the public that the State has endorsed that message.” *Id.* And it determined that license plates are “government-mandated, government-controlled, and government-issued IDs that have traditionally been used as a medium for government speech.” *Id.* at 214. Dancing around that reasoning here would be a mess.

So even for those who think *Walker* is wrong, this case presents a poor vehicle to reimagine the government speech doctrine. A case arising in a factual context other than license plates would allow the Court to clarify the “holistic inquiry” without the baggage of *Walker*. *Shurtleff*, 596 U.S. at 252. And to the extent

there is a fear of *Walker* expanding government speech, the Court can continue to distinguish *Walker* in non-license-plate cases that overread its reasoning, as the Court did in *Matal*, 582 U.S. at 239.

III. The Decision Below Is Correct.

The Tennessee Supreme Court correctly held that the registration number on a license plate is government speech. The three considerations that typically “guide” the holistic inquiry—as well as a broader review of “context”—support government speech here. *Shurtleff*, 596 U.S. at 252.

1. The registration numbers satisfy the first factor—whether the government has historically communicated through the medium at issue. *Walker*, 576 U.S. at 210-12. Tennessee conveys (and has always conveyed) a functional, identifying message through registration numbers. That identifying message does not disappear on personalized plates.

Registration numbers on license plates have historically served as state-approved “identifiers for public, law enforcement, and administrative purposes.” *Vawter*, 45 N.E.3d at 1204. They convey a simple message: “Use these unique alphanumeric characters to identify this vehicle.” In other words, license plates act as “government-mandated, government-controlled, and government-issued IDs,” *Walker*, 576 U.S. at 214, and the State uses the registration number to communicate identifying information. That is why registration numbers must be unique and “clearly visible” on vehicles. Tenn. Code Ann. § 55-4-110(b); *id.* § 55-4-210(e).

In fact, “[l]icense plates originated solely as a means of identifying vehicles.” *Walker*, 576 U.S. at 223 (Alito, J., dissenting). In 1903, “Massachusetts became the first State to issue license plates,” requiring vehicles to bear “plates [that] . . . displayed the vehicle’s registration number.” *Id.* at 223-24; *see also* 1903 Mass. Acts, ch. 473, pp. 507-08. For decades thereafter, state-issued license plates “featuring a registration number, the name of the State, and sometimes the date . . . were the standard.” *Walker*, 576 U.S. at 224 (Alito, J., dissenting). Thus, from the very beginning, registration numbers transmitted an identifying message from the States.

The same goes for personalized plates: The registration numbers on vanity plates convey an identifying message from the State. That the State allows persons to request certain alphanumeric registration characters as their identifier in no way diminishes the State’s identifying message. The registration number still tells the public that they should identify the vehicle by the alphanumeric characters listed. While thousands of Tennessee citizens may want a personalized plate with a GOVOLS registration number, there can only be one such plate because the State conveys identifying messages through the registration numbers on personalized plates. *See* Tenn. Code Ann. § 55-4-210(e).

To be sure, drivers may seek to also communicate through registration numbers. But that does not somehow nullify the State’s identifying message. *Summum* specifically rejected the theory that “a [medium] can convey only one ‘message.’” 555 U.S. at 474.

That the registration number also “may reflect an individual’s personal or professional identity, or possibly express a thought or idea, is purely incidental to the primary function of vehicle identification”—a government message. *Kahn*, 16 Cal. App. 4th at 166.

An example illustrates the point. If a car with a personalized license plate reading ROLTIDE drives in an erratic or dangerous manner, the State wants the public and law enforcement to know that they can identify that vehicle by the registration number R-O-L-T-I-D-E. The vehicle owner may seek to communicate their own expression—support for the University of Alabama’s athletic teams—but that “does not extinguish the governmental nature of [Tennessee’s] message.” *Walker*, 576 U.S. at 217; *see Kahn*, 16 Cal. App. 4th at 166. No matter the owner’s intended communication, the State continues to convey its own functional, identifying message: “This vehicle can be identified by the characters R-O-L-T-I-D-E.” And the State conveys that message to the public with the understanding that it will be used when a vehicle drives recklessly, engages in criminal activity, faces an Amber Alert, etc. The critical public-safety purposes furthered by *all* license plates—personalized or not—underscores the existence of a government message and the important government interests furthered thereby.

The question then becomes whether the government-speech doctrine applies when the same medium—here, a registration number—conveys *both* a governmental message *and* a private message. It does.

Walker applied the government-speech doctrine when the medium at issue (license plate designs) conveyed both governmental and private messages. See *Walker*, 576 U.S. at 205; see also *id.* at 219 (“[D]rivers who display . . . license plate designs convey the messages communicated through those designs.”). Similarly, *Summum* held that monuments conveying both governmental and private messages constituted government speech. 555 U.S. at 472-75. In fact, this Court recognized that “the thoughts or sentiments expressed by a government entity that accepts and displays [a monument] may be quite different from those of either its creator or its donor.” *Id.* at 476. But even a private party’s aim to convey a *different* message through the same medium did not cause the Court to reject the government-speech doctrine. *Id.*; see also *Mech v. School Bd. of Palm Beach Cnty.*, 806 F.3d 1070, 1078-79 (11th Cir. 2015) (William Pryor, J.).

The takeaway: Tennessee uses the registration numbers on personalized plates to convey an identifying message, and that message does not dissipate when a private message coexists with the government message.

Gilliam disagrees. She claims that “the state is not expressing a message at all.” Pet. 25. But reality eviscerates that position. If there’s no government message conveyed through registration numbers, then why require license plates? “The very purpose of a license plate number . . . is to provide identifying information to law enforcement officials and others.” *United States v. Ellison*, 462 F.3d 557, 561 (6th Cir. 2006). That’s what led the dissent in *Walker* to

acknowledge that “license plates unquestionably contain *some* government speech (e.g., the name of the State and *the numbers and/or letters identifying the vehicle*).” 576 U.S. at 222 (Alito, J., dissenting) (second emphasis added).

Sure, the identifying message conveyed by registration numbers is dry and informational: “Identify this vehicle by A-B-C-1-2-3-4.” But for First Amendment purposes, dry and informational messages count just the same. This Court has eschewed the notion that a party is not speaking unless some “expressive” communication exists. *Sorrell*, 564 U.S. at 570 (quotations omitted); *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 755-61 (1976) (holding that disclosure of prescription drug “price information” is speech). All kinds of “dry information, devoid of advocacy, political relevance, or artistic expression” qualifies as speech that conveys a message. *Universal City Studios v. Corley*, 273 F.3d 429, 446 (2d Cir. 2001). “Instructions, do-it-yourself manuals, recipes, . . . even technical information about hydrogen bomb construction are often purely functional; they are also speech.” *Bernstein v. U.S. Dep’t of State*, 922 F. Supp. 1426, 1435 (N.D. Cal. 1996).

Ironically, in claiming that the government conveys no message here, Gilliam (and her army of supposed pro-free-speech amici) seek a dramatic *narrowing* of the types of speech that receive constitutional protection. To hold that license plates contain no government message whatsoever would call into question the holdings of cases like *Sorrell* and *Virginia State Board of Pharmacy*, Pet. 25, and, at minimum, would require the Court to gerrymander a line between the

communication of technical information generally and the communication of identifying information.

Gilliam deflects to her tired assertion that “[i]f the messages on personalized license plates *are* government speech,” then “Tennessee is babbling prodigiously” and “saying many unseemly things.” Pet. 20 (quoting *Matal*, 582 U.S. at 236). But a medium can convey more than one message. *Summum*, 555 U.S. at 474-77. And despite Gilliam’s suggestion to the contrary (at 14), it’s irrelevant that “[t]he government does not endorse the message a car owner intends to communicate.” *Summum* specifically rejected the notion that “if a government entity . . . does not formally embrace [the message intended by the private party], then the government has not engaged in expressive conduct.” 555 U.S. at 474. Again, the State is conveying an identifying message, independent of any incidental private expression.

Nor do Gilliam’s other skin-deep references to *Matal* move the needle. Pet. 20-24. In *Matal*, the dispute centered on trademarks. Trademarks are “distinctive marks—words, names, symbols, and the like—[that private parties use to] help distinguish [their] goods from those of others.” *Matal*, 582 U.S. at 223-24 (quotation omitted). For example, Nike Inc. has trademarked its iconic swoosh symbol and the phrase “Just do it,” and Apple Inc. has trademarked its logo and the phrase “Think different.” *Id.* at 236. Whether a mark is registered with the government or not, private parties can use these symbols and catchy phrases in commerce to identify and promote goods. *Id.* at 225.

If a private party chooses to register its mark, the government places the mark on the “federal register” and issues a certificate of registration. *Id.* at 224-25. Registration makes it easier for a private party to prevent others from using its mark. *Id.* at 226.

The *Matal* Court held that this governmental registration of purely private expression does not convert private speech into government speech. *Id.* at 235-39. That makes sense. “Trademarks have not traditionally been used to convey a Government message,” and the mere registration of a mark does not somehow infuse it with a governmental message. *Id.* at 238. In fact, the federal government in *Matal* affirmatively conceded that “even after a mark is registered, the owner’s placement of the mark on goods or advertisements in commerce is private rather than government speech.” Reply Br. of Petitioner at 14, *Matal v. Tam*, No. 15-1293, 2017 WL 117333 (U.S. Jan. 9, 2017). It is no surprise, then, that the Court held that the government-speech doctrine did not apply to trademarks. *Matal*, 582 U.S. at 238-39.

That holding starkly contrasts with the question here. In allowing vehicle owners to request a specific registration number, the State is not merely “affixing a government seal of approval” on an otherwise purely private message. *Id.* at 235; *see also Women for Am. First v. Adams*, 2022 WL 1714896, at *3 (2d Cir. May 27, 2022). The State conveys its own identifying message through registration numbers and, for a fee, allows private parties to request a governmental identifier that may have additional meaning to them. That is, this is not a message that starts out purely private and receives a government stamp of approval; this is

a message that starts out purely *governmental* (identify this vehicle by these characters) with the government allowing private parties to pick an identifier that may contain some incidental private meaning. *Matal* itself put it best: Trademark registration is “vastly different” from the “license plates in *Walker*.” 582 U.S. at 239.

2. The second consideration—association with the government—likewise favors government speech. *Walker* already held that “license plate designs are often closely identified in the public mind with the State.” 576 U.S. at 212 (cleaned up). Seeking to resist that directly-on-point authority, the petition accuses the lower court of “rel[ying] woodenly on *Walker*,” Pet. 23, but in reality, the Court’s reasoning fits hand-in-glove with the expression at issue here.

Walker emphasized the “governmental nature” of the Texas “license plate,” focusing on the plate’s purpose, appearance, and ownership. 576 U.S. at 212. Tennessee’s plates contain the same “governmental” features as Texas’s. Just as in *Walker*, “[e]ach [Tennessee] license plate is a government article serving the governmental purposes of vehicle registration and identification.” *Id.* Just as in *Walker*, “[t]he governmental nature of the plates is clear from their faces: The State places the name ‘[TENNESSEE]’ in large letters at the top of every plate.” *Id.* Just as in *Walker*, Tennessee “requires . . . vehicle owners to display license plates, and every [Tennessee] license plate is issued by the State.” *Id.* And just as in *Walker*, Tennessee owns the license plates and requires vehicle owners to return the plates upon revocation. *Id.*; see also *Summum*, 555 U.S. at 472 (noting that government

property is “often closely identified in the public mind with the government unit that owns the” property).

Next, *Walker* highlighted that “Texas license plates are, essentially, government IDs,” and “issuers of ID ‘typically do not permit’ the placement on their IDs of ‘message[s] with which they do not wish to be associated.’” 576 U.S. at 212 (quoting *Sumnum*, 555 U.S. at 471). Again, that reasoning applies here. Indeed, “*Walker* identified license plates as essentially government IDs even though it involved specialty designs instead of the combination of letters and numbers that actually identify the vehicle.” *Vawter*, 45 N.E.3d at 1205 n.7. And registration numbers are even more integral to the government-ID nature of license plates. *Id.* Accordingly, license-plate observers “routinely—and reasonably—interpret [registration numbers] as conveying some message on the [issuer’s] behalf.” *Walker*, 576 U.S. at 210 (quoting *Sumnum*, 555 U.S. at 471).

Finally, as in *Walker*, “a person who displays a message on a [Tennessee] license plate” through their registration number “likely intends to convey to the public that the State” approved their message. *Id.* at 212-13. Rather than use “private methods to display personal messages far more prominently and cost effectively,” *Vawter*, 45 N.E.3d at 1206, an applicant for a personalized plate seeks to “enlist the *government* to print and issue an official license plate with his message and to use that message as the official identification and registration number for his vehicle,” *Odquina v. Honolulu*, No. 22-cv-407, 2022 WL 16715714, at *10 (D. Haw. Nov. 4, 2022). That “is not accidental.” *Id.*

“[V]ehicle owners requesting and displaying [personalized license plates] recognize the close association of the message with the state.” *Vawter*, 45 N.E.3d at 1205.

The petition (at 22) argues that the government-association consideration cannot support government speech because citizens would not attribute the private message conveyed by “IMHIGH” or “IMINLUV” to the government. That same argument was rejected in both *Walker*, Pet.App.27a-28a, and *Summum*, 555 U.S. at 474. The Court has now repeatedly held that license plates are “‘closely identified in the public mind’ with the [State]” because they “serve as a form of ‘government ID’”—an ID that includes designs *and* registration numbers. *Matal*, 582 U.S. at 238 (quoting *Walker*, 576 U.S. at 212); *see also Vawter*, 45 N.E.3d at 1206. That is why drivers, like Gilliam, “prefer[] a license plate . . . to the purely private speech expressed through bumper stickers.” *Walker*, 576 U.S. at 212-13.

The petition also points (at 22) to a 200-person survey presented by Gilliam at trial. But no government-speech case has ever turned on polling. Probably because this Court has typically declined “the invitation to rest constitutional law upon” the “uncertain foundations” of “public opinion polls.” *Stanford v. Kentucky*, 492 U.S. 361, 377 (1989). And this case proves why. Gilliam’s survey rested on a false dichotomy: It asked whether “[t]he message featured on a personalized license plate represents the speech or views of the government” or “the person who chose it.” Pet.App.29a; Trial Tr. 76. Gilliam’s own polling expert admitted at trial, repeatedly, that there was “no option

. . . where [participants could] say, I think it's a mixture of both." Trial Tr. 108. The survey thus fundamentally failed to account for the reality that there can be mixed messages where the government conveys a distinct message alongside the intended private message. Pet.App.29a-30a. Not to mention, the use of the word "chose" in the polling questions ascribes a level of agency and autonomy that applicants do not have: Applicants request; they do not choose.

Gilliam defends this survey (at 22) by claiming that its phrasing "came from the State's own website." And she harps on the Tennessee Arts Commission's statement that personalized plates convey "your own unique message." Pet. 6, 11, 22.² But that misses the point. That a private message exists does not rule out a parallel government message. *Supra* 23-26. The questions erroneously presumed that "a [medium] can convey only one 'message.'" *Summum*, 555 U.S. at 474. And the survey focused only on the private message by emphasizing that "license plates can be personalized with your own unique message," without mentioning the identifying information conveyed by the State through registration numbers. Pet.App.29a. And then it forced participants to attribute the message to either the government or the private person, without asking whether the expression could contain both governmental and private messages. Pet.App.29a-30a.

² The Tennessee Department of Revenue exercises no control over the website for the independent Tennessee Arts Commission.

Gilliam cannot distance this case from *Walker*'s reasoning or its intuitive conclusion that government IDs are associated with the government.

3. The third consideration—the degree of control over the communication at issue—also illustrates that license plate registration numbers constitute government speech.

In *Walker*, the Court explained that the State exercised control over license plate designs because Texas had “sole control over the design, typeface, color, and alphanumeric pattern for all license plates”; it required approval of “every specialty plate design proposal”; and it had regularly exercised its authority by “reject[ing] at least a dozen proposed designs.” 576 U.S. at 213 (quotations omitted). By “exercising ‘final approval authority,’” the State controlled the medium of expression. *Id.* (quoting *Summum*, 555 U.S. at 473).

The same goes for Tennessee’s personalized plates. As in Texas, Tennessee has “sole control over the design, typeface, color, and alphanumeric pattern for all license plates.” *Id.* (quotations omitted). Not only that, state law sets out the requirements for registration numbers in minute detail, covering everything from the number of characters, to acceptable character configurations, to the physical size of the characters. Tenn. Code Ann. §§ 55-4-103(c), -210, -214(b)(2). The Department “‘actively’ review[s] every proposal” to ensure compliance with statutory requirements. *Shurtleff*, 596 U.S. at 257 (quoting *Walker*, 576 U.S. at 213); see Tenn. Code Ann. § 55-4-210(a); Tenn. Comp. R. & Regs. 1320-08-01-.02. It regularly exercises its authority to reject proposed registration numbers.

Walker, 576 U.S. at 213; *see* Trial Ex. 15. And it revokes plates issued in error. *See* Tenn. Code Ann. § 55-5-117(a). This level of “selective receptivity,” *Summum*, 555 U.S. at 417, and “final approval authority” supports the treatment of license plate registration numbers as government speech. *Vawter*, 45 N.E.3d at 1206 (quoting *Walker*, 576 U.S. at 213).

Gilliam seeks to undermine the State’s control by arguing that the State does not “dream up” the personalized registration numbers. Pet. 24. But this Court has refuted the notion that private involvement “in the design . . . of a message” undermines the governmental nature of the message when the government must “approve” the proposal. *Walker*, 576 U.S. at 212-13, 217. “The monuments in *Summum* and the license plates in *Walker* were government speech, even though private entities designed them.” *Mech*, 806 F.3d at 1078-79.

Gilliam then (at 24-25) attempts to shift the inquiry from whether the government exercised final approval authority to whether the government exercised “editorial control” to “adopt[]” a private message, citing *Summum*. That’s not the question. *Summum*, 555 U.S. at 473; *Walker*, 576 U.S. at 213; *Shurtleff*, 596 U.S. at 256-58. Again, *Summum* explicitly *rejected* the notion that “a [medium] can convey only one ‘message’—which is, presumably, the message intended by the [creator]—and that, if a government entity . . . does not formally embrace *that* message, then the government has not engaged in expressive conduct.” 555 U.S. at 474.

Nor does Gilliam adequately grapple with the implications of her position. She tries to assure the Court

(at 3) that the government “undoubtedly can” prohibit “profane, sexualized, or vulgar personalized license plates.” But what about racial slurs? If the government speech doctrine doesn’t apply, then *Matal* suggests the State cannot prevent “[s]peech that demeans on the basis of race” from being affixed to license plates. 582 U.S. at 246. So the upshot of Gilliam’s position is that the State of Tennessee must affix the n-word—and other abhorrent racial slurs—on government-owned, government-issued license plates. Tennessee won’t do it. And the First Amendment does not put the State to the choice of shutting down its vanity plate program or allowing racial slurs on government IDs.

The bottom line: The Tennessee Supreme Court got it right.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

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