No. ____

IN THE

Supreme Court of the United States

SAUNDRA M. JACK, in her official capacity as Commissioner of the Virginia Department of Motor Vehicles,
Petitioner,

v.

CURTIS M. WHATELEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Virginia, like every other state, requires all motor vehicles to display a visible license plate with a unique letter and number combination that identifies the vehicle and to whom it is registered. Also like many other states, Virginia permits residents to choose their unique letter and number combination so long as they do not "carry a connotation that may be reasonably seen by a person viewing a license plate as 1) profane, obscene, or vulgar in nature, 2) sexually explicit or graphic, 3) excretory related, 4) describing intimate body parts or genitals, 5) describing drugs, drug culture or drug use, 6) condoning or encouraging violence, and/or 7) describing illegal activities or illegal substances."[1]

The question presented is whether a state may, consistent with the First Amendment, limit individual expression on government-issued license plates, which are owned by the State and are issued by the State for the primary purpose of identifying motor vehicles and confirming registration with the state?

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[1] Va. Dep't of Motor Vehicles, Form VSA 10, *License Plate Application*, at 2 (July 1, 2026), https://perma.cc/6VNG-B66B.

PARTIES TO THE PROCEEDINGS

Petitioner Saundra M. Jack is the current Commissioner of the Virginia Department of Motor Vehicles and appears in her official capacity as successor to former Commissioner Gerald F. Lackey. Lackey was the appellee in the court of appeals and the defendant in the district court.[2]

Respondent Curtis M. Whateley was the appellant in the court of appeals and the plaintiff in the district court.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Whateley* v. *Lackey*, No. 25-1751 (4th Cir.), judgment entered July 31, 2026.
- *Whateley* v. *Lackey*, No. 6:25-cv-00010-NKM-CKM (W.D. Va.), judgment entered May 30, 2025.

There are no other proceedings in state or federal court directly related to this case.

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[2] Pursuant to Sup. Ct. R. 35.3, Saundra M. Jack has been substituted as the Petitioner. Ms. Jack replaced Gerald F. Lackey as the Commissioner of the Virginia Department of Motor Vehicles in May 2026.

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INTRODUCTION

In *Walker* v. *Texas Division, Sons of Confederate Veterans, Inc.*, this Court called license plates "essentially, government IDs" but expressly left open whether the characters on personalized plates are government speech. 576 U.S. 200, 204, 212 (2015). That unresolved question now squarely divides the lower courts. Here, the Fourth Circuit held that personalized registration characters are private speech, in line with Maryland's highest court. The Tennessee and Indiana supreme courts hold the opposite. The conflict turns on a narrow but consequential question: when owner-selected characters continue to serve as the state's official vehicle-registration identifier, does the owner's additional personal message eliminate the state's speech? This case cleanly presents that question and the direct conflict over its answer.

The answer determines the constitutional rules governing state personalized license plate programs. Virginia alone has more than 930,000 personalized plates. If their registration characters are government speech, the selection of those characters is governed by the government-speech doctrine rather than the First Amendment rules governing forums for private speech. If they are private speech, those decisions are constrained by forum doctrine and the First Amendment. The same government-speech question is now pending in the Seventh Circuit.

The decision below is also wrong. In *Walker*, this Court described license plates as government IDs serving the governmental functions of registration and identification. In *Summum*, this Court recognized that private and governmental speakers may

communicate different things through the same expression. Yet the Fourth Circuit treated a driver's added personal meaning as displacing the state's use of the same characters as an official vehicle identifier. It also discounted Virginia's active screening and final approval authority because the state does not itself originate the personalized message.

This case is ready for review now. The Fourth Circuit conclusively resolved the government-speech question as a matter of law, and the remand concerns only downstream forum issues. Immediate review also preserves a particularly clean vehicle—if Virginia ultimately prevails on remand, the published government-speech rule may remain in place without a conventional adverse final judgment from which Virginia could seek review.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Saundra M. Jack, in her official capacity as Commissioner of the Virginia Department of Motor Vehicles, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at *Whateley* v. *Lackey*, 184 F.4th 368 (4th Cir. 2026), and is reproduced at Pet. App. 1a–36a. The district court's opinion is reported at 785 F. Supp. 3d 149 and is reproduced at Pet. App. 37a–59a.

JURISDICTION

The Fourth Circuit entered judgment on July 31, 2026. Pet. App. 1a. This petition is filed within 90

days of that judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of Virginia law, Va. Code §§ 46.2-712(A) and 46.2-726, are reproduced at Pet. App. 60a–62a.

STATEMENT OF THE CASE

1. In *Walker*, this Court held that specialty-license-plate designs are government speech even when private organizations propose them. License plates are "government article[s] serving the governmental purposes of vehicle registration and identification," are closely associated with the issuing state, and remain subject to the state's final approval. 576 U.S. at 212–13. They are, in short, "essentially, government IDs." *Id.* at 212. And private participation in creating a message "does not extinguish the governmental nature of the message." *Id.* at 217. The Court expressly reserved the question presented here: whether the alphanumeric characters on personalized, or "vanity," plates are government speech. *Id.* at 204.

2. Virginia has required all drivers to display identifying license plates on their motor vehicles since 1906. An Act to Regulate the Running of Automobiles, ch. 299, 1906 Va. Acts 525, 526. It was not until 1972 that Virginia permitted drivers, at the Commissioner's discretion, to request a personalized license plate registration number. Ch. 427, 1972 Va. Acts 491, 491. Virginia law defines a "license plate" as a device containing letters, numerals, or both that is attached to a vehicle "to indicate that the vehicle is properly registered with the Department." Va. Code

§ 46.2-100. Virginia accordingly requires registered vehicles to display license plates bearing "the registration number assigned to the motor vehicle." *Id.* §§ 46.2-711(F), 46.2-712(A). The plates remain DMV property and may be revoked, cancelled, or repossessed. *Id.* § 46.2-713.

Today, an owner may request the characters that will make up the vehicle's registration number. *See id.* § 46.2-726. For an additional $10 annual fee, a registrant may request up to seven permitted characters. Pet. App. 4a. More than 930,000 Virginia vehicles, about 11% of the state's registered vehicles, display personalized plates. *Ibid.*

A requested combination must be unique. Once DMV approves it, the resulting personalized plate uses that combination as its registration number for government identification of a vehicle. Pet. App. 4a–5a. DMV screens personalized requests under published criteria. It rejects combinations reasonably understood as, among other things, profane or vulgar, sexually explicit, encouraging violence, or describing illegal activity, and DMV may recall a plate that should not have been issued. *Ibid.*

3. Respondent Curtis Whateley requested "FTP&ATF." DMV approved the request and issued the plate. Pet. App. 5a–6a. Whateley intended the com-bination to express his views about policing and the Bureau of Alcohol, Tobacco, Firearms and Explosives. According to Whateley, it meant "Fuck the Police & Alcohol, Tobacco, and Firearms." Pet. App. 6a.

DMV ultimately received a citizen complaint describing the plate as "most offensive." Pet. App. 6a.

DMV's Personalized License Plate Review Board voted 9–1 to recall it because the combination could reasonably be understood as profane, obscene, or vulgar and as condoning or encouraging violence. Pet. App. 40a. DMV notified Whateley and provided replacement plates. *Ibid.*

Whateley sought administrative review. Pet. App. 6a. After a hearing, DMV upheld the recall. Pet. App. 40a. Whateley then sued Gerald F. Lackey, the DMV Commissioner, in his official capacity. The district court had federal-question jurisdiction under 28 U.S.C. § 1331 because Whateley asserted federal constitutional claims under 42 U.S.C. § 1983. Pet. App. 38a. As relevant here, Whateley alleged that "FTP&ATF" was private political speech and that DMV violated the First Amendment by recalling it because of its message. Pet. App. 7a. He sought declaratory and injunctive relief. Pet. App. 38a.

4. The district court dismissed the complaint. *Whateley* v. *Lackey*, 785 F. Supp. 3d 149 (W.D. Va. 2025). Applying *Walker* and *Shurtleff*, it held that Virginia's personalized registration numbers are government speech.

The court focused on the registration number's function. Virginia's state-owned plates communicate that "this vehicle is registered with the state," and personalization "does not change the message's general meaning." *Id.* at 155. As the court put it, "[l]icense plates are the government saying 'this car is registered,' vanity plate or not." *Id.* at 156.

The court also relied on this Court's treatment of license plates as government IDs in *Walker* and on Virginia's final approval authority. DMV establishes

content restrictions, screens applications, rejects prohibited combinations, and may recall plates after issuance. *Id.* at 157–59. Taken together, those circumstances established government speech. *Id.* at 153–59.

5. Whateley appealed, and the Fourth Circuit vacated that judgment in a unanimous, published opinion. Pet. App. 2a, 36a. The court began with what it called a "threshold question": "[w]hat, exactly, is the speech at issue here?" Pet. App. 13a. It rejected the district court's focus on the identifying communication carried by the registration number and instead treated Whateley's personalized letter and character combination as the *only* speech at issue. Pet. App. 13a–14a.

The court then applied the government-speech factors to that expression. It reasoned that ordinary registration numbers "do not themselves express ideas," are not a language understandable to observers, and have "no intrinsic meaning." Pet. App. 20a. It also concluded that observers would attribute personalized combinations to their drivers and that DMV's substantive restrictions and approval authority regulate private expression rather than control a governmental message. Pet. App. 26a, 32a–34a.

The court announced a categorical rule: "the personalized character combinations on Virginia's vanity plates are private speech, not government speech." Pet. App. 34a. It remanded for the district court to determine what type of forum Virginia created and whether DMV's restrictions satisfy the First Amendment standards applicable to that forum. Pet. App. 35a–36a.

REASONS FOR GRANTING THE PETITION

I. The decision below exacerbates a direct conflict on an important federal question.

A. Tennessee and Indiana hold that personalized registration characters are government speech.

The Tennessee Supreme Court confronted the same question presented here last year in *Gilliam* v. *Gerregano*, 737 S.W.3d 258 (Tenn. 2025). Like Virginia, Tennessee requires registered vehicles to display state-issued plates bearing unique registration characters but permits owners to request the characters displayed on personalized plates. *Id.* at 261–63. The court held that those characters are government speech. *Id.* at 274.

The identifying function was central to that holding. Tennessee explained that a registration number communicates that "the number can be used to identify the vehicle." *Id.* at 270. A driver may select "YOLO," for example, to express a personal philosophy, while the state uses the same characters to identify the vehicle. *Id.* at 270–71. "[D]ifferent speakers," the court explained, "may convey different things through the same medium of speech." *Id.* at 270.

The Indiana Supreme Court reached the same conclusion in *Commissioner of Indiana Bureau of Motor Vehicles* v. *Vawter*, 45 N.E.3d 1200 (Ind. 2015). "First and foremost," Indiana explained, license-plate characters function as "identifiers for public, law enforcement, and administrative purposes." *Id.* at 1204. Letting a registrant select those characters "does not change the principal function of state-issued license plates as a mode of unique vehicle identifica-

tion." *Id.* at 1205. Indiana also found personalized plates closely associated with the state and subject to meaningful governmental control. *Id.* at 1205–07.

Two state courts of last resort thus hold that personalized registration characters remain government speech despite the registrant's role in selecting them.

B. The Fourth Circuit and Maryland hold that personalized registration characters are private speech.

The Fourth Circuit reached the opposite conclusion. Its "threshold" inquiry identified the relevant speech as Whateley's personalized message rather than the identifying information carried by the registration number. Pet. App. 13a–14a.

The court reasoned that ordinary registration characters "do not themselves express ideas or communicate in a language that can be understood by observers" and have "no intrinsic meaning." Pet. App. 20a. Although the characters identify a vehicle through government records, the court did not treat that function as a governmental message. *Ibid.* Applying the remaining *Walker* and *Shurtleff* considerations, it held that Virginia's personalized combinations "are private speech, not government speech." Pet. App. 34a.

Maryland's highest court reached the same result in *Mitchell* v. *Maryland Motor Vehicle Administration*, 148 A.3d 319 (Md. 2016). It held that personalized characters are private speech because the driver's message has "intrinsic meaning" independent of identification, observers attribute that message to the owner, and Maryland's approval

authority does not establish sufficient governmental control. *Id.* at 326–28. The court expressly rejected *Vawter*'s reasoning. *Id.* at 327–28.

The programs share the features that matter to the government-speech inquiry. Each court considered a state-issued license plate bearing a unique registration combination selected by the vehicle owner, subject to state approval, and used to identify the registered vehicle. Yet the courts assign opposite legal significance to those common features. Tennessee and Indiana hold that the identifier's continuing governmental function supports govern-ment speech even when the owner selects the characters. *Gilliam*, 737 S.W.3d at 270–71; *Vawter*, 45 N.E.3d at 1204–05. The Fourth Circuit and Maryland hold that the owner's personalized message is private speech notwithstanding that same identification function. Pet. App. 20a, 34a; *Mitchell*, 148 A.3d at 326–28.

The conflict therefore concerns the legal significance of features common to all four programs, not a factual distinction capable of reconciling the decisions. Two state supreme courts hold that those features produce government speech; the first federal court of appeals to decide the post-*Walker* question and another state high court hold that they produce private speech. Rule 10(a) specifically identifies that kind of conflict on an important federal question as a compelling reason for review.

C. The Fourth Circuit's decision changes the posture in which this question reaches the Court.

When challengers petitioned this Court to review Tennessee's decision in *Gilliam*, no federal court of

appeals had decided whether personalized registration characters are government speech after *Walker*. Tennessee emphasized that absence in opposing review, noting that "not one U.S. Court of Appeals" had weighed in on the question and identifying this case as one in which further federal appellate consideration was expected. Brief in Opposition at 14, *Gilliam* v. *Gerregano*, No. 25-107 (U.S. Nov. 3, 2025).

That gap has now been filled. The Fourth Circuit has squarely decided the question in a published opinion, and its answer conflicts with *Gilliam* and *Vawter*. And a similar challenge remains pending in the Seventh Circuit. *See M J Nichols Co.* v. *Boardman*, No. 26-1043 (7th Cir. argued Sept. 17, 2026). The existing Rule 10(a) conflict is ready for review. The Seventh Circuit case further confirms that the conflict will only deepen on one side or the other. The question therefore reaches this Court in a posture that did not exist last Term: a federal court of appeals has decided an important federal question in conflict with state courts of last resort. That is precisely the kind of conflict Rule 10(a) identifies as a compelling reason for review.

II. The decision below conflicts with this Court's government-speech precedents.

A. Under *Walker*, vehicle identification is a governmental function.

The Fourth Circuit's categorical rule rests on three related errors. Most fundamentally, it discounts a governmental function this Court placed at the center of its analysis in *Walker*: vehicle identification. It then treats the driver's private message as displacing any simultaneous governmental communi-

cation. And it demands more governmental authorship than this Court's precedents require.

The Fourth Circuit held that a registration number's identifying function does not count as governmental communication. Registration characters, it reasoned, "do not themselves express ideas or communicate in a language that can be understood by observers" and have "no intrinsic meaning." Pet. App. 20a.

That premise is difficult to reconcile with this Court's reasoning in *Walker*.

The Fourth Circuit relied on *Walker*'s reference to "state names and vehicle identification numbers" when discussing the history of expressive plate designs. 576 U.S. at 210–11. But this Court's analysis turned to the governmental character of the plate itself, stating that each plate is a "government article serving the governmental purposes of vehicle registration and identification" and is "essentially" a government ID. *Id.* at 212. Those passages distinguish expressive designs from identification information without treating the latter as non-governmental. Official identifying information remains part of the governmental character of the plate even though it is functional and derives its meaning from the state's registration system.

The four dissenting Justices likewise agreed that "license plates unquestionably contain some government speech," including "the numbers and/or letters identifying the vehicle." *Id.* at 222 (Alito, J., dissenting). The dispute between the majority and dissent concerned the privately proposed specialty

designs, not the governmental role of the vehicle identifier.

A registration number communicates information because the state creates and administers the system in which it operates. "ABC1234" identifies the registered vehicle to which Virginia assigned that number. Its content may be mundane. It is still information communicated through an official government identifier. Registration numbers help law enforcement identify suspects, recover stolen vehicles, and enforce traffic laws via automated speed and red-light cameras. *See* Erica Vincent & Steven Lambert, *Transportation License Plate Policy Update*, Nat'l Conf. of State Legislatures (Oct. 12, 2016), https://perma.cc/J4BM-9LYA. They help state regulators verify that a motor vehicle has passed the state's emissions and safety inspections. And registration numbers help administrative agencies monitor road usage, enforce parking permit zones, and collect tolls. *Id*. States also rely on them to alert other states that they vouch for the motorist and request safe passage for their resident on foreign roadways. *Cf. Haig* v. *Agee*, 453 U.S. 280, 292–93 (1981) (discussing passports, which are also a form of government-issued identification).

Personalization does not change those functions. If Virginia assigns "ABC1234," those characters identify the vehicle. If a driver instead requests "FTP&ATF," the approved characters perform the same task. The personalized number gains an additional meaning; its governmental function remains.

The Fourth Circuit reached private speech only after treating as non-communicative the identifica-

tion function that this Court described in *Walker* as a governmental purpose.

B. A private message does not erase simultaneous government speech.

Once the identifying function is recognized, this Court has already supplied the next principle: one object or medium may communicate more than one speaker's message.

In *Pleasant Grove City* v. *Summum*, 555 U.S. 460 (2009), privately created monuments became government speech when the city selected and displayed them. The Court recognized that "it frequently is not possible to identify a single 'message' that is conveyed by an object or structure." *Id.* at 476. The government's communication may be "quite different" from that intended by the private creator or donor. *Ibid.*

This Court applied the same principle to license plates in *Walker*. Private organizations proposed specialty-plate designs, but "[t]he fact that private parties take part in the design and propagation of a message" did not "extinguish the governmental nature of the message." 576 U.S. at 217.

Whateley selected "FTP&ATF" to express his own views. But that establishes only that Whateley is speaking through the characters. Under *Summum* and *Walker*, Virginia may simultaneously communicate through those same characters as well.

The Fourth Circuit nonetheless began by identifying Whateley's personalized message as the only relevant speech. Pet. App. 13a–14a. By isolating the driver's message at the threshold, the Fourth

Circuit assumed away much of the question it was supposed to decide.

C. The state need not author the personalized message itself.

Virginia actively administers its personalized-plate program. It owns the plates, determines their format and permissible characters, requires each personalized combination to be unique, reviews requested combinations under written standards, retains final approval authority, and may deny or recall combinations that do not comply with those standards. Pet. App. 4a–5a, 32a. This case exists because Virginia exercised that authority.

In *Walker*, this Court treated comparable authority as strong evidence of government speech. Texas "maintain[ed] direct control over the messages conveyed" because it reviewed proposed specialty designs and rejected some of them. 576 U.S. at 213. Echoing *Summum*, the Court held that Texas had "'effectively controlled' the messages" by exercising "'final approval authority' over their selection." *Ibid.* (quoting *Summum*, 555 U.S. at 473).

The Fourth Circuit acknowledged Virginia's approval and recall authority but found it insufficient because Virginia does not originate the personalized combinations. Pet. App. 32a–34a. It analogized Virginia's program to trademark registration in *Matal*.

But "[f]ederal law does not create trademarks." *Matal* v. *Tam*, 582 U.S. 218, 224 (2017). A valid trademark may be used, and may receive legal protection, without federal registration. *Id.* at 225–26. And the Patent and Trademark Office "does not

dream up" or edit the marks submitted for registration. *Id.* at 235. Federal registration therefore attaches government benefits to an independently existing private mark.

A Virginia registration number is different. It is created and used within the state's vehicle-registration system, appears on a state-owned plate the law requires the vehicle to display, and functions as the unique registration identifier for that vehicle. Registrants propose the characters only a small percentage of the time. When they do, Virginia decides whether those characters will be used as the government's registration number displayed on its plate.

The Fourth Circuit's rule extends this Court's reasoning in *Matal* beyond its rationale while refusing to apply *Walker* to the government-identification function on which this Court relied.

III. The question presented is important and recurring.

This case is not simply about one provocative license plate. It determines the constitutional framework governing a statewide vehicle-registration program based on principles that are applicable nationwide.

Virginia has more than 930,000 personalized plates, representing roughly 11% of its registered vehicles. Pet. App. 4a. It has the highest "vanity plate" participation rate in the nation. Adam Liptak, *Edgy Vanity Plates Test Limits of Free Speech*, N.Y. TIMES (Aug. 6, 2026), https://perma.cc/PQ87-97V2. Under the decision below, the characters on every one of those plates are private speech, and DMV's

decisions about what combinations it will issue are subject to the First Amendment rules governing the forum Virginia has created.

The same question has arisen elsewhere. Tennessee and Indiana have adopted the opposite government-speech rule, while Maryland agrees with the Fourth Circuit. And a federal district court in Wisconsin recently held that "the text forming the registration numbers of Wisconsin's personalized registration plates is government speech." *M J Nichols Co.* v. *Thompson*, No. 24-cv-566, 2025 WL 3564628, at *1 (W.D. Wis. Dec. 12, 2025). That judgment is now on appeal where the Seventh Circuit heard argument on September 17, 2026.

The issue is not going away without this Court's guidance. Every state still requires all active motorists to register their vehicle with the state department of motor vehicles and obtain a license plate with a unique registration number. *See* Vincent & Lambert, *supra*, at 12. Every state also permits residents to request personalized registration numbers on their license plates. *Id.* And almost every state continues to reserve the right to refuse to issue any alphanumeric character combination for use on a government-issued license plate that may be perceived as offensive. *Id.*[3]

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[3] *E.g.,* 23 V.S.A. § 304(d) (2026) (the Vermont Commissioner of the Department of Motor Vehicles is authorized to revoke or refuse to issue any plate with a combination of letters or numbers that "(1) are vulgar, scatological, or obscene, or constitute racial or ethnic epithets; (2) connote breast, genitalia, pubic area, or buttocks or relate to sexual or eliminatory functions; (3) refer to any intoxicant or drug; to the use, nonuse, distribution, or sale of an intoxicant or drug; or to a user, nonuser, or purveyor of an

The disagreement among the courts has immediate consequences for state administration. A state following *Gilliam* or *Vawter* may treat the selection of personalized registration characters as an exercise of government speech. A state governed by the decision below must instead justify restrictions on a materially similar program under forum doctrine. That difference affects not only which messages may appear on personalized plates, but the constitutional framework governing every approval, denial, and recall.

The recurring disagreement reflects a broader problem this Court has already recognized. When government invites private participation in a governmental program, the line between government and private speech can "blur." *Shurtleff* v. *City of Boston*, 596 U.S. 243, 252 (2022). Personalized registration numbers present that problem in

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intoxicant or drug; (4) refer to gender, gender identity, sexual orientation, or disability status; (5) suggest a government or governmental agency; (6) suggest a privilege not given by law in this State; or (7) form a slang term, abbreviation, phonetic spelling, or mirror image of a word described in subdivisions (1) through (6) of this subsection."); Okla. Admin. Code § 670:20-29-2 (2026) (Service Oklahoma "shall deny" a request for a personal registration number "if an objective, reasonable person would find that the proposed combination of letters and/or numbers listed on the application falls into at least one of the following categories: (1) carries a sexual connotation; (2) expresses contempt, ridicule or superiority based on race, gender, politics, ethnic heritage, or religion; (3) is vulgar, derogatory, profane or obscene; (4) refers to bodily functions, bodily fluids, or intimate body parts; (5) refers to alcohol, drugs or drug paraphernalia, illegal activities or gangs; or (6) would otherwise be inappropriate for display on a state-issued license plate.").

concrete form: private selection occurs within a mandatory state identification system.

Thus, it is not unique applications of law to fact—or even unique fact patterns—driving the different outcomes among lower courts. The facts and relevant law in *Whateley*, *Mitchell*, *Gilliam*, and *Vawter* are virtually indistinguishable. Yet the judicial schism over whether personalized license plates are government speech or private speech persists. There is little to be gained from awaiting further percolation. The Fourth Circuit's opinion, as well as the opinions from the high courts of Maryland, Tennessee, and Indiana, are thorough. Other courts have engaged with these high state court decisions and issued opinions explaining why they rejected or adopted the reasoning from one side of the divide. Whether personalized license plate registration numbers are government speech is an issue ripe for this Court's resolution. The Court should resolve it now.

IV. This case is an appropriate vehicle for resolving the question presented.

The Fourth Circuit's decision answers a fully resolved question of law, and the proceedings on remand cannot change the Fourth Circuit's answer. In *Hosanna-Tabor Evangelical Lutheran Church & School* v. *EEOC*, the Sixth Circuit rejected the church's ministerial-exception defense and remanded for proceedings on the employee's retaliation claim. 565 U.S. 171, 181 (2012). This Court granted certiorari and reversed the threshold constitutional ruling. *Id.* at 181, 196. In *Guido* v. *Mount Lemmon Fire District*, the Ninth Circuit conclusively resolved the scope of the ADEA and remanded the discrimination claims. 859 F.3d 1168, 1175 (9th Cir.

2017). This Court likewise granted review and resolved the threshold legal question. 586 U.S. 1, 4 (2018).

The exercise of jurisdiction accords with this Court's longstanding certiorari principles. In *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, this Court described certiorari as a jurisdiction "to be exercised sparingly" and ordinarily after final decree, while identifying cases of "peculiar gravity and general importance" or those requiring "uniformity of decision" as appropriate for review. 240 U.S. 251, 258 (1916). Both considerations are present here. The petition presents an important First Amendment question governing state identification programs, and the Fourth Circuit's published decision directly conflicts with decisions of state courts of last resort.

The Court's cases declining review after remand involved materially unresolved questions. In *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook Railroad Co.*, the court of appeals remanded for the district court to determine whether contempt had occurred and, if so, whether the coercive fine remained warranted. 389 U.S. 327, 328 (1967) (per curiam). In *Virginia Military Institute* v. *United States*, the remand left the appropriate remedy unresolved. 508 U.S. 946, 946 (1993) (Scalia, J., respecting denial of certiorari). And in *Abbott* v. *Veasey*, further factual and remedial proceedings remained, after which the petitioners could again seek review. 580 U.S. 1104, 1105 (2017) (Roberts, C.J., respecting denial of certiorari).

Here, nothing on remand can alter the Fourth Circuit's flawed government-speech holding challenged here.

First, the Fourth Circuit conclusively resolved the government-speech question. The court did not hold merely that Whateley plausibly alleged private speech or that further factual development was required. It announced a categorical rule: "the personalized character combinations on Virginia's vanity plates are private speech, not government speech." Pet. App. 34a. That rule binds the district court on remand.

Second, the remand addresses only the consequences of that holding. Forum analysis becomes necessary because the Fourth Circuit classified the characters as private speech. *See Walker*, 576 U.S. at 214–15. Whether Virginia ultimately satisfies the standards applicable to that forum cannot alter the antecedent government-speech rule that now binds federal courts throughout the Fourth Circuit.

Third, review now preserves a particularly clean vehicle for resolving the conflict: if Virginia ultimately prevails on remand, the Fourth Circuit's government-speech rule would remain intact without an adverse final judgment for Virginia to challenge.

Finally, the issue is cleanly preserved and fully developed. The district court decided it, the parties extensively briefed it, and the Fourth Circuit resolved it as a matter of law. Whateley's other constitutional claims are no longer part of the appeal. Pet. App. 7a n.4. This question of exceptional importance and public interest is ripe for review in a case arising from the state most affected on a question where lower courts are divided and this Court would not benefit from any further percolation.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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