

First Amendment Law—*Gilliam v. Gerregano*: Overreach of the Government Speech Doctrine in the Regulation of Vanity Plates

TYLER FOSTER*

I. INTRODUCTION	653
II. THE DEVELOPMENT OF THE GOVERNMENT SPEECH DOCTRINE.....	655
III. <i>GILLIAM V. GERREGANO</i>	658
IV. THE TENNESSEE SUPREME COURT’S APPLICATION OF THE GOVERNMENT SPEECH DOCTRINE	660
V. CRITIQUING THE EXPANSION OF THE GOVERNMENT SPEECH DOCTRINE.....	661

I. INTRODUCTION

In *Gilliam v. Gerregano*, the Tennessee Supreme Court addressed whether personalized alphanumeric messages on vanity license plates represent the speech of the individual driver or of the government.¹ Leah Gilliam, a Tennessee resident, had displayed the vanity plate

* Articles Editor, Volume 57, and Staff Member, Volume 56, *The University of Memphis Law Review*; Juris Doctor Candidate, The University of Memphis Cecil C. Humphreys School of Law, 2027; B.A., Political Science and Sociology, *summa cum laude*, The University of Memphis, 2023. I am deeply grateful to Professor Anna Vescovo for her invaluable guidance in developing my legal research and writing skills. I am truly appreciative of attorney Stevie Phillips Persinger, for whom I previously worked as a paralegal, for introducing me to legal research and writing and for exemplifying exceptional advocacy. I also extend my heartfelt thanks to Nathan Daniels and the members of *The University of Memphis Law Review* for his thoughtful feedback and guidance throughout the writing process. Finally, I am profoundly thankful to my friends and family for their unwavering encouragement and support.

“69PWNDU” on her vehicle for over a decade without incident.² The Tennessee Department of Revenue abruptly revoked her license plate in 2021, alleging that it was “offensive to good taste and decency.”³ Gilliam challenged the revocation, asserting that the state’s actions violated her First Amendment rights.⁴ The Tennessee Court of Appeals agreed, holding that the vanity plate conveyed private speech subject to constitutional protection.⁵ The Tennessee Supreme Court reversed, holding that alphanumeric license plate combinations are government speech and therefore exempt from the Free Speech Clause of the First Amendment.⁶

The Tennessee Supreme Court based its decision largely on the United States Supreme Court’s holding in *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, which held that state-approved specialty license plate designs constituted government speech.⁷ But the court’s extension of *Walker* to personalized license plate messages misconstrues both the scope and logic of the government speech doctrine. Unlike specialty designs proposed by private organizations and crafted in coordination with the state, vanity plates consist of words or abbreviations created solely by the individual driver.⁸ These combinations, although appearing on government-issued license plates, are not designed or authored by the state.⁹ Rather, they are selected to express personal

1. No. M2022-00083-SC-R11-CV, 2025 Tenn. LEXIS 54, at *13–14 (Tenn. Feb. 26, 2025). On December 8, 2025, the United States Supreme Court denied Gilliam’s petition for a writ of certiorari. *Gilliam v. Gerregano*, 146 S. Ct. 881 (2025).

2. *Gilliam*, 2025 Tenn. LEXIS 54, at *9.

3. *Id.* at *5–6, *9; *see generally* TENN. CODE ANN. § 55-4-210(d)(2) (2026) (authorizing specialty plates).

4. *Gilliam*, 2025 Tenn. LEXIS 54, at *9–10.

5. *Gilliam v. Gerregano*, No. M2022-00083-COA-R3-CV, 2023 Tenn. App. LEXIS 229, at *46–47 (Tenn. Ct. App. June 1, 2023).

6. *Gilliam*, 2025 Tenn. LEXIS 54, at *42.

7. 576 U.S. 200, 213 (2015).

8. *Gilliam*, 2025 Tenn. LEXIS 54, at *4.

9. *Cf. Walker*, 576 U.S. at 213 (holding that Texas’ specialty plate designs were government speech, in part because the state played a significant role in their creation and approval).

identity, humor, or commentary.¹⁰ In short, the messages belong to the driver, not the government.¹¹

This Comment argues that the Tennessee Supreme Court erred by categorizing vanity plate messages as government speech. These messages are better understood as private speech expressed in a limited public forum, where the government may impose restrictions only if the speech is inconsistent with the forum's intended purpose.¹² By treating Gilliam's self-created plate as state-authored speech, the court departed from core First Amendment principles and sanctioned the state's use of undefined and inconsistent standards to suppress disfavored viewpoints. Part II of this Comment explains the development of the government speech doctrine and its application to license plate programs. Part III outlines the facts and procedural background of *Gilliam v. Gerregano*. Part IV analyzes the Tennessee Supreme Court's reasoning and explains why its application of *Walker* is inconsistent with First Amendment precedent. Part V critiques the *Gilliam* decision's broader implications for expressive rights and argues that vanity license plate programs invite private speech deserving of constitutional protection.

II. THE DEVELOPMENT OF THE GOVERNMENT SPEECH DOCTRINE

The United States Supreme Court's First Amendment jurisprudence has long drawn a line between private expression and government

10. See, e.g., Marybeth Herald, *Licensed to Speak: The Case of Vanity Plates*, 72 U. COLO. L. REV. 595, 596 (2001) (observing that vanity plates are a way for individual drivers "to imprint their personality, thoughts, or viewpoints on their car's license plate").

11. See *id.* at 609–10 (explaining that "vanity plates are a means of self-expression" and that "they are often intended to convey a message—a message often likely to be understood by other drivers and pedestrians"); see also *Mitchell v. Md. Motor Vehicle Admin.*, 148 A.3d 319, 327 (Md. 2016) (noting that a person who sees a vanity license plate is likely to understand "that the vehicle owner, not the government, is the speaker, and that the speaker implicated the State in a private message that . . . the government permitted, but certainly did not endorse").

12. See *Walker*, 576 U.S. at 232 (Alito, J., dissenting) (citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)) ("If, as I believe, the Texas specialty plate program created a limited public forum, private speech may be excluded if it is inconsistent with the purpose of the forum.").

speech.¹³ As the Supreme Court explained in *Pleasant Grove City v. Summum*, the government speech doctrine¹⁴ permits the government to curate its own messages without being constrained by the Free Speech Clause of the First Amendment.¹⁵ In *Summum*, the Court held that a city could reject a privately donated monument for use in a public park because the park's permanent displays were government-selected and thus expressed a government message.¹⁶ That reasoning later became the foundation for government speech arguments in other cases involving expressive public media.

The Supreme Court extended the government speech doctrine in *Walker*, holding that specialty license plates created through collaboration between private applicants and the state were government speech.¹⁷ The Supreme Court explained that the license plates were state-issued, bore the state's name, had a history of conveying state messages, and were subject to the state's editorial control.¹⁸ Because Texas exercised final authority over whether a design appeared on a plate and took ownership of each specialty plate design, the entire plate was deemed to be the government's message.¹⁹ The *Walker* Court established a three-factor test focusing on historical use, public perception, and government control when determining whether expression on a government-administered medium constitutes private or government speech.²⁰

However, the United States Supreme Court has also emphasized limits to the government speech doctrine. In *Matal v. Tam*, the Supreme Court held that trademark registration under the Lanham Act was not government speech, even though it involved government review and

13. See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009) (explaining the Supreme Court's jurisprudence on the government speech doctrine).

14. See *Government Speech Doctrine*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("The rule that government speech is exempt from First Amendment scrutiny. It is rooted in the democratic ideal that the government may permissibly favor points of view and values of the majorities within the electorate.").

15. *Summum*, 555 U.S. at 467–68.

16. *Id.* at 472.

17. *Walker*, 576 U.S. at 212 ("Texas also owns the designs on its license plates, including the designs that Texas adopts on the basis of proposals made by private individuals and organizations.").

18. *Id.*

19. *Id.* at 210.

20. *Id.* at 209–14; see *infra* Part IV (discussing the *Walker* test).

approval.²¹ The Court explained that trademarks are created entirely by private individuals and do not convey a government message merely because they are included in a government-run system or are approved by the government.²² This holding was reaffirmed two years later in *Iancu v. Brunetti*, where the Supreme Court struck down the Lanham Act’s ban on registering “immoral or scandalous” trademarks.²³ The Court explained that such a ban constituted viewpoint discrimination and thus violated the First Amendment.²⁴ Together, *Tam* and *Iancu* establish that government involvement alone does not convert private speech into government speech, especially when the government does not substantially shape or control the message.

The boundary between private and government speech resurfaced in *Shurtleff v. City of Boston*.²⁵ There, the Supreme Court held that the City of Boston’s program allowing outside groups to fly flags on a city-owned flagpole did not amount to government speech because the city had not historically controlled or edited the content of the flags.²⁶ As in *Tam*, the Supreme Court emphasized the importance of editorial discretion in distinguishing government speech from the mere facilitation of private speech.²⁷ This body of precedent draws a meaningful distinction between government-authored messages and an individual’s private expression on government property.²⁸

21. 582 U.S. 218, 235 (2017). The Lanham Act is codified at 15 U.S.C. §§ 1051–1127.

22. *Tam*, 582 U.S. at 235.

23. 588 U.S. 388, 392 (2019); *see also* 15 U.S.C. § 1052(a) (2018) (prohibiting registration of trademarks that contain “immoral, deceptive, or scandalous matter”).

24. *Iancu*, 588 U.S. at 390; *see also* *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (“Viewpoint discrimination is thus an egregious form of content discrimination.”).

25. 596 U.S. 243, 247–48 (2022).

26. *Id.* at 248–50.

27. *Id.* at 252–53.

28. *See, e.g., id.* at 258 (explaining that “the city’s lack of meaningful involvement in the selection of flags or the crafting of their messages leads us to classify the flag raisings as private, not government, speech”).

III. *GILLIAM V. GERREGANO*

In 2010, Leah Gilliam applied for a personalized license plate with the combination “69PWNDU.”²⁹ She initially explained that “pwnd” was a video game term and that “69” referred to part of her Google phone number, though she later claimed that it was a reference to the 1969 moon landing.³⁰ Although the number “69” can carry sexual connotations, the Tennessee Department of Revenue (“Department”) approved Gilliam’s application, and Gilliam displayed the plate on her vehicle without incident for more than a decade.³¹ In 2021, a Department employee was alerted to the plate.³² The Department then reviewed the message and “determined that it should be revoked because it referred to sexual domination.”³³ The Department notified Gilliam that her plate had been revoked and offered her the option of selecting a new personalized plate or accepting a standard one.³⁴

The next month, Gilliam requested an administrative hearing to contest the revocation of her license plate.³⁵ But two weeks later, she filed suit in the Davidson County Chancery Court, alleging that the state’s revocation violated her First Amendment rights.³⁶ She argued that the Department’s actions amounted to impermissible viewpoint discrimination based on its disapproval of the message conveyed by her chosen alphanumeric combination.³⁷ Because Gilliam’s complaint raised a constitutional challenge to a state statute, the case was referred to a three-judge panel as required by Tennessee law.³⁸ After a bench trial, the panel upheld the revocation, finding that the personalized alphanumeric configuration constituted government speech and thus was not protected by

29. *Gilliam v. Gerregano*, No. M2022-00083-SC-R11-CV, 2025 Tenn. LEXIS 54, at *8 (Tenn. Feb. 26, 2025).

30. *Id.*

31. *Id.* at *8–9.

32. *Id.* at *9.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at *9–10.

37. *Id.* at *13–14 (first citing *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019); then citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829–30 (1995)).

38. *Id.* at *10.

the First Amendment.³⁹ Gilliam then appealed to the Tennessee Court of Appeals.⁴⁰

The Tennessee Court of Appeals reversed.⁴¹ The court applied the three-part test from *Walker* and found that the history and perception of vanity plates favored classifying them as private speech.⁴² The court explained that individual drivers—not the government—create vanity plate messages and that the public reasonably perceives those messages as originating from the driver.⁴³ The court also noted that the Department’s “shaping and control over vanity plate messaging has been inconsistent, at best.”⁴⁴ The court thus concluded that vanity plates do not constitute government speech and are therefore subject to “the strictures of the First Amendment.”⁴⁵ The Department then appealed to the Tennessee Supreme Court.⁴⁶

The Tennessee Supreme Court reversed.⁴⁷ Applying the *Walker* test, the court found that Tennessee has historically used license plates to communicate state messages,⁴⁸ that license plates are closely associated with the state in the public’s mind,⁴⁹ and that the Department exercises control by reviewing and approving all personalized license plate applications.⁵⁰ Although the court recognized the distinction between personalized messages and specialty plate designs, it concluded that *Walker*’s reasoning required treating vanity plate combinations as government speech not protected by the First Amendment.⁵¹

39. *Id.* at *11.

40. *Id.* at *12.

41. *Id.* at *12–13.

42. *Gilliam v. Gerregano*, No. M2022-00083-COA-R3-CV, 2023 Tenn. App. LEXIS 229, at *33 (Tenn. Ct. App. June 1, 2023) (explaining that vanity plates “communicate what the individual driver, not the government, chooses”).

43. *Id.*

44. *Id.* at *47.

45. *Id.* at *49.

46. *Gilliam*, 2025 Tenn. LEXIS 54, at *13.

47. *Id.* at *2.

48. *Id.* at *25–26.

49. *Id.* at *29–30 (citing *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 212 (2015)).

50. *Id.* at *35–36.

51. *Id.* at *38.

IV. THE TENNESSEE SUPREME COURT'S APPLICATION OF THE GOVERNMENT SPEECH DOCTRINE

The Tennessee Supreme Court applied the *Walker* three-factor test to determine whether the alphanumeric configuration on a personalized license plate constituted government speech. This test considers: (1) the historical use of the medium for conveying government messages; (2) whether the public would reasonably view the message as the government's; and (3) the degree of government control over the message conveyed.⁵² Applying these factors, the court held that vanity plate messages are government speech and therefore not subject to First Amendment scrutiny.⁵³

With respect to the first factor, the court explained that the state has historically used license plates to help law enforcement and the public identify vehicles.⁵⁴ This is consistent with the *Walker* Court's analysis, which emphasized the longstanding use of plates to promote state identity, including mottos like "The Lone Star State."⁵⁵

With respect to the second factor, the court concluded that personalized messages are closely associated with the state due to a license plate's appearance, function, and issuance process.⁵⁶ Each plate bears the word "Tennessee" and a state-issued registration number, which drivers are legally required to display.⁵⁷ Although Gilliam presented survey evidence suggesting that most people view vanity plate content as originating from the driver, the court found that these results were questionable due to methodological flaws in the survey.⁵⁸

With respect to the third factor, the court emphasized that the Department reviews all personalized license plate requests and retains the statutory authority to deny or revoke license plates.⁵⁹ The Department uses tools such as the "Objectionable Table" and the Urban Dictionary to determine whether messages are "offensive to good taste and

52. *Id.* at *11 (citing *Walker*, 576 U.S. at 210–13).

53. *Id.* at *37–38.

54. *Id.* at *28.

55. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 230 (2015).

56. *Gilliam*, 2025 Tenn. LEXIS 54, at *29.

57. *Id.* at *25.

58. *Id.* at *32–33.

59. *Id.* at *5; *see also* TENN. CODE ANN. § 55-5-117(a)(1) (2026).

decency.”⁶⁰ Although there are some inconsistencies in enforcement, the court concluded that the state retained sufficient authority over license plate issuance to satisfy *Walker*’s control prong.⁶¹ The court also relied on *Summum*, where the United States Supreme Court held that a city’s acceptance of certain privately donated monuments constituted government speech based largely on its selective approval process⁶² and the limited public park space available.⁶³ Having determined that all three *Walker* factors weighed in favor of classifying vanity plate messages as government speech, the court held that the First Amendment’s Free Speech Clause did not apply.⁶⁴

V. CRITIQUING THE EXPANSION OF THE GOVERNMENT SPEECH DOCTRINE

The Tennessee Supreme Court’s decision in *Gilliam v. Gerregano* stretches the government speech doctrine too far by treating personalized vanity plate messages as government speech, thereby removing them from First Amendment protection.⁶⁵ By overextending the *Walker* Court’s reasoning, the Tennessee Supreme Court failed to adequately appreciate the critical distinctions between Texas’ specialty plate program and Tennessee’s vanity plate program. In *Walker*, the state exercised final editorial control over specialty plate designs, expressly

60. *Gilliam*, 2025 Tenn. LEXIS 54, at *6; *see also* TENN. CODE ANN. § 55-4-210(d)(2) (2026).

61. *Gilliam*, 2025 Tenn. LEXIS 54, at *12.

62. *Id.* at *15–16; *Pleasant Grove City v. Summum*, 555 U.S. 460, 473 (2009) (explaining that “the City has ‘effectively controlled’ the messages sent by the monuments in the Park by exercising ‘final approval authority’ over their selection” (quoting *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 560–61 (2005))).

63. *Summum*, 555 U.S. at 479 (observing that monuments “monopolize the use of the land on which they stand and interfere permanently with other uses of public space”).

64. *Gilliam*, 2025 Tenn. LEXIS 54, at *37–38.

65. *See generally* Joseph Blocher, *Viewpoint Neutrality and Government Speech*, 52 B.C. L. REV. 695, 698 (2011) (critiquing the government speech doctrine for permitting circumvention of viewpoint neutrality and weakening First Amendment protections).

approving messages it was willing to endorse.⁶⁶ In contrast, Tennessee's program allows individual drivers to propose personalized plate messages, which the state neither authors nor endorses.⁶⁷

As the United States Supreme Court emphasized in *Tam*, private speech does not become government speech merely because it passes through a state-administered system.⁶⁸ Yet the *Gilliam* court failed to fully acknowledge this holding. The plaintiff in *Gilliam* presented survey data showing that Tennesseans overwhelmingly associate vanity plate messages with the driver, not the government.⁶⁹ Nonetheless, the court relied on the plates' official appearance and regulatory function in concluding that they are "not primarily a vehicle for individual expression."⁷⁰ But as the United States Supreme Court reaffirmed in *Shurtleff*, when the government allows private expression on its property without exercising meaningful control over the content, the speech remains private under the First Amendment.⁷¹

66. *Walker v. Tex. Div., Sons of Confederate Veterans*, 576 U.S. 200, 213 (2015) (explaining that Texas "has sole control over the design, typeface, color, and alphanumeric pattern for all license plates").

67. *See Gilliam*, 2025 Tenn. LEXIS 54, at *5 (explaining that Tennessee's personalized plate messages originate from the applicant and are merely reviewed by the Department of Revenue); *see also* Drew A. Driesen, *Vanity Lawfare: Vanity License Plates and the First Amendment*, 106 IOWA L. REV. 363, 401 (2020) ("Although the relevant state agency approves the proposed expression, the agency plays no role in inventing it.").

68. *Matal v. Tam*, 582 U.S. 218, 235 (2017) (rejecting the argument that private speech becomes government speech merely because it is reviewed and approved by a government office); *see also* Caroline Mala Corbin, *Mixed Speech: When Speech Is Both Private and Governmental*, 83 N.Y.U. L. REV. 605, 608 (2008) ("Classifying mixed speech as purely private or purely governmental masks the competing interests at play. Once mixed speech is labeled government speech, the free speech interests of speakers and audiences are dismissed.").

69. *See Gilliam*, 2025 Tenn. LEXIS 54, at *10 (discussing expert witness testimony and noting that eighty-seven percent of 200 Tennesseans surveyed "consider the alphanumeric combination on a personalized license plate to be the vehicle owner's speech").

70. *Id.* at *30–31 (emphasizing the governmental nature and function of Tennessee's plates as "government article[s]" similar to official IDs (alteration in original) (quoting *Walker*, 576 U.S. at 212))).

71. *Shurtleff v. City of Bos.*, 596 U.S. 243, 258 (2022) (explaining that the government's "lack of meaningful involvement in the selection of flags or the crafting of their messages leads us to classify the flag raisings as private, not government, speech").

Furthermore, the Department screens proposals under a vague “offensive to good taste and decency” standard, relying on sources such as the Urban Dictionary and the “Objectionable Table.”⁷² This vague criteria results in arbitrary enforcement, as illustrated by the approval of plates like “BUTNKD” and “69BEAST.”⁷³ In *Iancu*, the United States Supreme Court struck down a similarly vague standard for trademarks, finding that it enabled viewpoint discrimination.⁷⁴ Tennessee’s approach suffers from a similar defect and should be struck down, especially given the absence of any meaningful process to contest revocations.⁷⁵

By treating Gilliam’s self-created plate as state-authored speech, the Tennessee Supreme Court departed from core First Amendment principles and sanctioned the use of undefined and inconsistent standards to suppress disfavored viewpoints. The better approach, as adopted by the Tennessee Court of Appeals, is to treat vanity plate messages as private speech.⁷⁶ Such an approach would preserve the state’s ability to impose reasonable, viewpoint-neutral restrictions while ensuring that individual expression remains protected under the First Amendment.

72. *Gilliam*, 2025 Tenn. LEXIS 54, at *6.

73. *Id.* at *7.

74. *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019) (explaining that the “immoral or scandalous” standard is substantially overbroad, thus violating the First Amendment).

75. *See Gilliam*, 2025 Tenn. LEXIS 54, at *7 (noting that plate revocations are reviewed internally by the Commissioner and legal counsel and that the vehicle owner must surrender the plate upon revocation).

76. *See Gilliam v. Gerregano*, No. M2022-00083-COA-R3-CV, 2023 Tenn. App. LEXIS 229, at *46–47 (Tenn. Ct. App. June 1, 2023) (explaining that “messages on personalized vanity license plates are private, not government, speech”).