No. 14-144

In the Supreme Court of the United States

JOHN WALKER III, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE BOARD, ET AL.,

Petitioners,

v.

TEXAS DIVISION, SONS OF CONFEDERATE VETERANS, INC., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

AMICUS BRIEF OF OHIO, ARKANSAS, COLORADO, HAWAI'I, ILLINOIS, INDIANA, MICHIGAN, MISSOURI, NEW HAMPSHIRE, NEW MEXICO, AND WASHINGTON IN SUPPORT OF PETITIONERS

MICHAEL DEWINE
Attorney General of Ohio

ERIC E. MURPHY*
State Solicitor
**Counsel of Record*
30 E. Broad St., 17th Floor
Columbus, OH 43215
614-466-8980
614-466-5087 fax
eric.murphy@
ohioattorneygeneral.gov

Counsel for Amicus Curiae State of Ohio

DUSTIN MCDANIEL
Attorney General
State of Arkansas
323 Center Street
Ste. 1100
Little Rock, AR 72201

JOHN W. SUTHERS
Attorney General
State of Colorado
1300 Broadway
Denver, CO 80203

RUSSELL A. SUZUKI
Attorney General
State of Hawai'i
425 Queen Street
Honolulu, HI 96813

LISA MADIGAN
Attorney General
State of Illinois
100 West Randolph Street
12th Floor
Chicago, IL 60601

GREGORY F. ZOELLER
Attorney General
State of Indiana
302 W. Washington Street
IGC-South, Fifth Floor
Indianapolis, IN 46204

BILL SCHUETTE
Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

CHRIS KOSTER
Attorney General
State of Missouri
Supreme Court Building
207 West High Street
Jefferson City, MO 65101

JOSEPH A. FOSTER
Attorney General
State of New Hampshire
33 Capitol Street
Concord, NH 03301

HECTOR E. BALDERAS
Attorney General
State of New Mexico
P. O. Drawer 1508
Santa Fe, NM 87504

ROBERT W. FERGUSON
Attorney General
State of Washington
1125 Washington St. SE
PO Box 40100
Olympia, WA 98504

QUESTIONS PRESENTED

1. Do the messages and symbols on state-issued specialty license plates qualify as government speech immune from any requirement of viewpoint neutrality?

2. Has Texas engaged in "viewpoint discrimination" by rejecting the license-plate design proposed by the Sons of Confederate Veterans, when Texas has not issued any license plate that portrays the confederacy or the confederate battle flag in a negative or critical light?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes, Rules, and Constitutional Provisions

Other Authorities

STATEMENT OF *AMICI* INTEREST

Texas is not the only State that has adopted some type of specialty-license-plate program. As the appendix to this *amicus* brief illustrates, most States have passed laws authorizing vehicle owners to purchase specialty plates containing specific messages. The Fifth Circuit below ruled that those messages qualify as "private speech" solely because a "reasonable observer" would view the license plates in that light, and so the court subjected Texas to a broad viewpoint-neutrality requirement for all messages on specialty plates. Pet. App. 11a-24a. If adopted by this Court as a national rule, the Fifth Circuit's view could dramatically affect the States' specialty-license-plate programs. In particular, its reasonable-observer test could eliminate a State's ability to keep democratic control over license-plate messages even through legislation specifically identifying all state-approved messages as the State's own. Because the *amici* States desire to retain that control, they file this brief in support of the Texas Petitioners.

SUMMARY OF ARGUMENT

Whether assessed from a practical perspective or from a legal perspective, the Fifth Circuit's holding that speech on specialty license plates must satisfy a broad viewpoint-neutrality rule lacks merit.

I. Starting with the practical perspective, in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), the Court looked to the "consequences" of adopting a viewpoint-neutral test for monuments in public parks when holding that those monuments qualify as government speech that can be viewpoint based. If a government permitted a monument honoring veterans of a certain war, the Court reasoned,

a viewpoint-neutral test would require it to accept an opposing monument questioning those veterans' sacrifice. The Court found that result untenable.

These consequences are just as relevant for specialty license plates as they are for public-park monuments. A nationwide review of the messages on the States' specialty plates shows that, just as with park monuments, the States have authorized plates expressing certain viewpoints (and not others) on many topics. States, for example, have authorized specialty plates supporting the military, but not plates questioning its role in our society. Likewise, States have authorized specialty plates promoting either patriotism in our country or pride in the State's heritage, without authorizing plates denigrating the country or the State's history. And States have authorized specialty plates promoting positions on a variety of policy questions without approving plates taking a different tack on those questions. Because a broad viewpoint-neutral test could substantially change the nature of the States' specialty-license-plate programs, the Court should be wary of treating specialty plates as a forum for private speech.

The circuit courts that have held that messages on specialty plates qualify as private speech have given inadequate attention to these potential consequences. Most courts, like the Fifth Circuit below, have simply ignored them. By comparison, the Fourth Circuit's view that the States could use neutral rules for specialty plates to eliminate these potentially far-reaching effects conflicts with this Court's rejection of a similar suggestion in *Summum*.

II. Turning to the legal perspective, this Court has never adopted anything like the Fifth Circuit's "reasonable-observer" standard in cases (like this

one) involving a government's refusal to subsidize speech. Those governmental subsidies, the Court has noted, can take different forms. The government at times allows private actors to use its *property* to undertake expressive activities; at other times the government may provide its *funds* for those expressive activities. In these "subsidy" or "forum" cases, the Court has applied three different standards of First Amendment scrutiny to laws that grant subsidies to some speech and not to other speech. For cases involving a traditional or designated public forum, the Court requires the government to grant access to the forum in a content-neutral manner. For cases involving a limited or nonpublic forum, the Court requires the government to grant access to the forum in a reasonable and viewpoint-neutral manner. For cases involving the government's own speech, the Court allows the government to use its property or funds to subsidize particular viewpoints without having to subsidize opposing viewpoints.

The Fifth Circuit's reasonable-observer test conflicts with this Court's cases choosing between these three standards of scrutiny in a given case. *First*, to distinguish a *designated public forum* from a *nonpublic forum*, the Court has adopted a government-intent test, one that asks whether the government meant to open its property as a broad forum for debate. That standard is incompatible with the Fifth Circuit's reasonable-observer test, which could often result in a "public forum" finding contrary to what the government intended. The standard, moreover, would be dispositive here. It is obvious that most States did not intend to create a nonpublic forum with their license-plate programs, as most retain ultimate control over the permitted messages.

Second, to distinguish between *private speech* in a public or nonpublic forum and *government speech* under the Establishment Clause, the Court has expressly rejected the use of a reasonable-observer test. It has instead asked whether the government sufficiently controls the speech at issue. A reasonable-observer test, by contrast, could silence a private speaker based simply on the mistaken view that the speaker's expression was the government's own. These cases, incompatible with the Fifth Circuit's reasonable-observer test, likewise show that the license-plate messages should qualify as government speech rather than private speech in a forum.

ARGUMENT

The Texas Petitioners have shown that, under the Court's cases distinguishing between government speech and private speech, the Court should view the messages on Texas specialty plates as government speech (allowing Texas to issue plates bearing some viewpoints but not others). *See* Pet'rs Br. 15-46. This *amicus* brief adds two points—one pragmatic, the other legal—in support of the Texas Petitioners. As for the pragmatic, the Court should consider the Fifth Circuit's viewpoint-neutrality test with its eyes open to the effect the test could have on the States' specialty-license-plate programs. Most States use those plates to promote specific viewpoints on a subject, not to open a broad debating forum. Such a use could become all but impossible if this Court adopted a broad viewpoint-neutral rule requiring States to sponsor all views on a subject once they authorize one view. As for the legal, the Court should evaluate the Fifth Circuit's reasonable-observer test against the general principles it has applied in "subsidy" cas-

es (like this one) involving a government's refusal to promote speech rather than the government's restriction on speech. Those general principles show that the reasonable-observer test has no legal grounding in this context.

I. MOST STATES HAVE USED SPECIALTY LICENSE PLATES TO AUTHORIZE SPECIFIC MESSAGES, NOT TO CREATE "DEBATING FORUMS"

As the Texas Petitioners have shown (Pet'rs Br. 32-41), the Court should be guided by *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), which held that the government may engage in viewpoint discrimination when selecting monuments for public parks from private donors. The *amici* States seek to highlight one aspect of *Summum*: When rejecting the argument that the government could simply adopt neutral "'time, place and manner restrictions'" for park monuments, the Court relied on the "consequences" of that rule. *Id.* at 479. It would mean, among other things, that the United States' decision to accept the Statue of Liberty from France triggered a constitutional duty to "provid[e] a comparable location in the harbor of New York for other statues of a similar size and nature (*e.g.*, a Statue of Autocracy, if one had been offered by, say, the German Empire or Imperial Russia)." *Id.* The Court found it "obvious" that "if public parks were considered to be traditional public forums for the purpose of erecting privately donated monuments, most parks would have little choice but to refuse all such donations." *Id.* at 480. And it said that "where the application of forum analysis would lead almost inexorably to closing of the forum, it is obvious that forum analysis is out of place." *Id.*

Similar logic applies to specialty license plates. As with park monuments, *see id.* at 472, most States control the messages permitted on their license plates (although they do so in different ways). *See* Stephanie S. Bell, Note, *The First Amendment and Specialty License Plates: The "Choose Life" Controversy*, 73 Mo. L. Rev. 1279, 1281-84 (2008). Some allow vehicle owners to obtain only those plates authorized by legislation. *See, e.g.*, Ohio Rev. Code §§ 4503.431-.433, .46-.481, .491-.591, .67-.762, .85-.96 (identifying all approved plates). Others rely on state agencies to consider all specialty-plate applications. *See, e.g.*, Ky. Rev. Stat. Ann. § 186.164(9)-(15). Still others allow for the creation of specialty plates through a combination of legislative, administrative, and/or third-party processes subject to final authority by state agents. *See, e.g.*, Pet'rs Br. 4-5. In most cases, the States' ultimate discretion over the design and issuance of a specialty plate—be it through the legislative or administrative process—is apparent.

Further, as with park monuments, *see Summum*, 555 U.S. at 479-80, most States' specialty plates articulate certain viewpoints on a topic but not others. Accordingly, a viewpoint-neutral test has similar consequences in this case as it did in *Summum*. Even a cursory review of specialty plates from around the country shows that a viewpoint-neutral test for any topic touched by a specialty plate could alter the nature of the States' programs. *See* Part I.A. The circuit courts that have disagreed with the States, by contrast, have largely ignored the consequences that *Summum* found important. *See* Part I.B. Here, as in *Summum*, the consequences of a viewpoint-neutral test go a long way toward showing

that most States did not intend to create any kind of "forum" with their specialty license plates.

A. States Have Used Specialty License Plates To Authorize Specific Viewpoints Across A Range Of General Topics

Through their specialty-license-plate programs, States have authorized vehicle owners to purchase plates expressing limited viewpoints on many subjects. These laws are, for the most part, incompatible with the notion that the States intended to create mini debating forums on issues of the day rather than to promote views that the States approve.

Most commonly, States have authorized specialty plates promoting the military. They have issued plates paying tribute to the military generally, including "Thank You U.S. Military" plates, Ohio Rev. Code § 4503.531, "Support our Troops" plates, Alaska Stat. Ann. § 28.10.181(x); N.C. Gen. Stat. Ann. § 20-79.4(b)(221), "Lest We Forget" plates, Mich. Comp. Laws § 257.811m, or "Florida Salutes Veterans" plates, Fla. Stat. Ann. § 320.08058(4). States have also issued plates "publicly recognizing" veterans who fought in specific wars or received specific medals. *See, e.g.*, N.M. Stat. Ann. §§ 66-3-418 to -419; Ohio Rev. Code §§ 4503.431-.433 (medals); Hawaii Rev. Stat. Ann. § 249-9.2(b) (wars). Funds from the plates often help military causes. *See, e.g.*, Conn. Gen. Stat. Ann. § 14-21u; Ind. Code §§ 9-29-5-38.5, 10-17-12-8. Yet, under the Fifth Circuit's view, the First Amendment could require States that have approved, say, plates supporting "Vietnam Veterans," La. Rev. Stat. Ann. § 47:490.13(A), to issue counter plates "questioning the cause for which [those] veterans fought." *Summum*, 555 U.S. at 480. That conse-

quence is no more palatable on license plates than it is on park monuments. While Paul Robert Cohen may have a right to express his (perhaps ineloquent) views about Vietnam on his jacket, *Cohen v. California*, 403 U.S. 15 (1971), he does not have a right to imprint those views on the States' license plates.

Aside from the military, States have issued specialty plates designed to promote pride in this country. Some, for example, have authorized a "Proud To Be An American" plate. *See, e.g.*, Ala. Code § 32-6-600; Mich. Comp. Laws § 257.811o. Others have similar plates recognizing patriotism or solidarity in the wake of the September 11 tragedy. *See* Conn. Gen. Stat. Ann. § 14-21o; N.M. Stat. Ann. § 66-3-424.17; Okla. Stat. tit. 47, § 1135.5(B)(32); R.I. Gen. Laws § 31-3-91. And still others have plates supporting the U.S. Olympic team (with a "Go Team USA" message). *See, e.g.*, Conn. Gen. Stat. Ann. § 14-21*l*; Fla. Stat. Ann. § 320.08058(6). Little did these States know that when they authorized these patriotic plates, according to the Fifth Circuit, they might have committed themselves to approve "Ashamed To Be An American" or "Go Team Russia" plates. But the Westboro Baptist Church's right to proclaim "'God Hates the USA/Thank God for 9/11'" on public sidewalks, *Snyder v. Phelps*, 131 S. Ct. 1207, 1213 (2011), should not extend to the States' license plates.

Switching from the national to the local, many States have approved messages fostering state pride, history, or culture. Ohio's "leader in flight" plate, for example, generates funds for a nonprofit promoting the city of Dayton's role in creating the airplane. Ohio Rev. Code §§ 4501.21, 4503.73. North Carolina, by contrast, has a "first in flight" plate for its vehicle

owners. *See* N.C. Gen. Stat. Ann. § 20-63(b). The Fifth Circuit's viewpoint-neutral test could suggest that Ohio has a duty to issue plates endorsing North Carolina as the "true" leader in flight. *Cf.* Patrick Jonsson, *First in Flight: Ohio or North Carolina?*, Christian Science Monitor (Mar. 10, 2003), *available at* http://www.csmonitor.com/2003/0310/p02s01-usgn.html (last visited on Jan. 6, 2015).

Similar examples abound. Idaho drivers might encounter plates promoting that State's "Famous Potatoes." *See* Idaho Code § 49-417c. Maine drivers might come across plates promoting that State's "Lobsters." *See* Me. Rev. Stat. tit. 29-A, § 456-A. Alaska offers plates promoting dog mushing and those who have finished the famed Iditarod race. *See* Alaska Stat. Ann. § 28.10.181(s), (y). Massachusetts has authorized a plate bearing the words "Boston Strong" and memorializing the 2013 bombing of the Boston Marathon. *See* Mass. Gen. Laws ch. 90, § 2e(d). New York allows its citizens to obtain "I Love New York" plates. *See* N.Y. Veh. & Traf. § 404-s. All of these plates express specific viewpoints; none opens up any kind of debating forum for all other viewpoints on that general topic.

Likewise, many States have adopted specialty plates endorsing *only* the sports teams or universities within the state and providing funding for local charities or in-state universities. *See, e.g.*, Ohio Rev. Code §§ 4503.51(E), 4501.21; Alaska Stat. Ann. § 28.10.181(o); Wash. Rev. Code §§ 46.18.215, .225. The Fifth Circuit's viewpoint-neutral test could suggest that once Wisconsin approved a Green Bay Packers plate, *see* Wis. Stat. § 341.14(6r)(f)(55), it was required to issue competing plates for Wisconsinites favoring the Chicago Bears, *cf.* 5 Ill. Comp.

Stat. Ann. 5/3-658(b). Likewise, by authorizing vehicle owners to promote state pride in (and funding for) The Ohio State University, *see* Ohio Rev. Code § 4503.51(E), must Ohio authorize license plates promoting pride in (and funding for) the University of Michigan? Must Michigan do the reverse? *See* Mich. Comp. Laws § 257.811e(4).

Apart from promoting state pride, States have authorized specialty plates on policy questions. Many States have approved license plates endorsing environmental conservation, such as "Protect our Environment" plates, Ala. Code § 32-6-155.1, "Protecting our Waters" plates, Mich. Comp. Laws § 257.811i, or "Save the Manatee" plates, Fla. Stat. Ann. § 320.08058(1). Often the funds collected for these plates are marked for environmental causes shared by the State. *See, e.g.*, Ga. Code § 40-2-86(*l*)(45) (proceeds of Georgia Sea Turtle Center plate to a wildlife conservation fund); Md. Code Ann., Transp. § 13-618(c)(2)(v) (proceeds of Chesapeake Bay Commemorative Registration plate to the Chesapeake Bay Trust). These States should not have to issue plates favoring different priorities. Colorado's "advancing clean energy" plate, *see* Colo. Rev. Stat. § 42-3-228, for example, should not compel it to adopt a "coal keeps the lights on" plate, *see* Ohio Rev. Code § 4503.96.

Many other examples exist in in the policy arena. If States approve plates encouraging the spaying or neutering of pets, *see, e.g.*, Ariz. Rev. Stat. Ann. § 28-2422, must they authorize plates opposing mandatory spaying-or-neutering laws? If States approve plates encouraging organ donation, *see, e.g.*, W. Va. Code § 17A-3-14(c)(48), must they authorize plates encouraging the legalization of organ sales? Or if

States approve plates with anti-drug messages for children, *see, e.g.*, N.Y. Veh. & Traf. § 404-u, must they authorize messages advocating drug legalization? *See Morse v. Frederick*, 551 U.S. 393 (2007); *cf. Freedom from Religion Found., Inc. v. City of Warren*, 707 F.3d 686, 697 (6th Cir. 2013) (Sutton, J.) (expressing skepticism, under a viewpoint-neutral test, over whether the government could "urge people to 'Register and Vote,' 'Win the War,' 'Buy U.S. Bonds' or 'Spay or Neuter Your Pets' without incurring an obligation to sponsor opposing messages").

The litigation frenzy that has ensued over "Choose Life" plates shows what might be in store for the States more generally if this Court adopts a nationwide viewpoint-neutral test across all specialty plates. Some States have chosen to authorize Choose Life plates to promote adoption and to generate funds for nonprofit entities assisting with adoption. *See, e.g.*, Ohio Rev. Code §§ 3701.65, 4503.91; Fla. Stat. Ann. § 320.08058(29); Tenn. Code Ann. § 55-4-306. A portion of these States then faced litigation to *enjoin* them from issuing the plates. *See ACLU of N.C. v. Tata*, 742 F.3d 563, 567 (4th Cir. 2014); *Planned Parenthood of S.C. Inc. v. Rose*, 361 F.3d 786, 788-89 (4th Cir. 2004). Other States, by contrast, opted not to adopt those plates. A portion of those States then faced litigation to *compel* them to issue the plates. *See Roach v. Stouffer*, 560 F.3d 860, 861-63 (8th Cir. 2009); *Ariz. Life Coal. Inc. v. Stanton*, 515 F.3d 956, 972-73 (9th Cir. 2008). States should not be put to this dilemma between eliminating their specialty-license-plate programs or facing perennial litigation over every approval or disapproval decision.

B. Lower Courts Have Paid Insufficient Attention To The Consequences Of A Broad Viewpoint-Neutral Requirement

As the Texas Petitioners note (Pet'rs Br. 10), the Fifth Circuit *ignored* the consequences of its private-speech holding and so made no effort to limit the reach of its viewpoint-neutral test. *See* Pet. App. 8a-16a. Indeed, the Fifth Circuit's broad view of what "viewpoint neutral" means only exacerbates these potential consequences. *See* Pet. App. 17a-24a. Likewise, most other circuit courts that have reached similar private-speech conclusions have overlooked these impacts. *See, e.g.*, *Roach*, 560 F.3d at 864-68; *Choose Life Ill., Inc. v. White*, 547 F.3d 853, 859-64 (7th Cir. 2008); *Ariz. Life Coal.*, 515 F.3d at 963-68; *Women's Emergency Network v. Bush*, 323 F.3d 937, 945 n.9 (11th Cir. 2003); *cf. ACLU of Tenn. v. Bredesen*, 441 F.3d 370, 391 (6th Cir. 2006) (Martin, J., dissenting) (conceding that "[i]f the KKK and Nazi Party are able to pull together 1,000 proud, dues-paying members, who wish to display such license plates on their cars, . . . they are entitled to do so").

As far as the *amici* States are aware, only the Fourth Circuit has addressed this concern that a viewpoint-neutral test might be the "death knell for specialty plates." *ACLU of N.C.*, 742 F.3d at 575. It gave two responses to that "[m]elodrama." *Id.* It said initially that *neutral* requirements for license plates (such as a requirement that the State receive "three hundred applicants before issuing a new specialty plate") would likely keep "'frivolous'" messages off of the States' roads. *Id.* (citation omitted). It then added that if these neutral rules did not suffice to do so, the States could always "choose to avoid . . . debate [on a particular topic] altogether" when they did

not want to express all viewpoints on that topic. *Id.* Both responses are misguided.

The Fourth Circuit's first response—that neutral requirements can alleviate these consequences—has *already* been rejected by this Court. *See Summum*, 555 U.S. at 479. Like the Fourth Circuit, the challengers in the public-monument context "deride[d] the fears expressed about the consequences" of a neutral rule for park monuments, saying that usual time, place, and manner restrictions could adequately address the government's concerns. *Id.* The Court rejected that derision, finding that "those concerns [were] well founded." *Id.* The concerns are no more "melodrama" in this context than they are in that one. *Cf. Lewis v. Wilson*, 253 F.3d 1077, 1079 (8th Cir. 2001) (requiring "Aryan-1" *vanity* plate).

Ironically, moreover, the Fourth Circuit's *merits* answer to these consequences runs headlong into its *standing* holding. In the license-plate context, the Fourth Circuit treats as the relevant "injury" not the inability to obtain a preferred plate but the mere discriminatory "playing field" resulting from a viewpoint-based plate, thus giving challengers *veto* power over any plate with which they disagree. *Rose*, 361 F.3d at 790-92 (Michael, J., op.); *see ACLU of N.C.*, 742 F.3d at 575 (enjoining plate). Under the Fourth Circuit's questionable logic, even a *single* person who disagreed with a "Support our Troops" or "Protect our Environment" plate could *stop* the State from issuing that plate without first satisfying the neutral rules for obtaining an opposing plate (the rules the Fourth Circuit identified as adequate to protect the State from a flood of lawsuits). "A First Amendment jurisprudence yielding these results does not promote

speech but represses it." *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 682 (1998).

There is also something odd with the judiciary giving a suggestion to the political branches on how they may adopt neutral rules in such a manner as to "*filter out*" minority viewpoints that they deem "'frivolous.'" *ACLU of N.C.*, 742 F.3d at 575 (emphasis added; citation omitted). After all, when the First Amendment does get triggered, this Court has long viewed with a skeptical eye even neutral speech restrictions that it believed were really "aimed at the suppression of ideas." *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 549 (2001); *cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). As in *Summum*, this very suggestion goes a long way toward showing that license plates are fundamentally different from actual forums for speech. *See* 555 U.S. at 479-80.

The Fourth Circuit's second response—that a State may exit the "debate" on a topic if it does not want to express both sides—was also already rejected by the Court. *See id.* at 479 (rejecting suggestion that a government had "'the option of a ban on all unattended displays'"). That was for good reason. It conflicts with the government's "right to 'speak for itself'" on a particular topic of the day, even a controversial one. *See id.* at 467 (citation omitted); *see also Gonzales v. Carhart*, 550 U.S. 124, 157 (2007). It also overlooks the importance of the issue. States have found specialty license plates useful to generate substantial charitable funds for nonprofit entities or activities whose messages they approve. *See, e.g.*, Ohio Rev. Code § 4501.21 (listing organizations and purposes to be funded through fees received from each plate); Mass. Gen. Laws ch. 90, § 2e (same); Tenn.

Code Ann. §§ 55-4-215 to -219 (same); *see also* Bell, 73 Mo. L. Rev. at 1279 & n.1 (noting that millions of dollars have been raised from various plates).

One last point. Some courts have invoked the *opposite* consequence that could arise from a government-speech holding for specialty license plates—for example, that the States could approve blatantly partisan messages on their license plates. This overlooks the democracy "buffer" that arises whenever courts uphold the political branches' policies in the face of a constitutional attack. "[O]f course, a government entity is ultimately 'accountable to the electorate and the political process for its advocacy.'" *Summum*, 555 U.S. 468 (citation omitted). Just as it is unlikely that governments will place fixed tributes to the political parties in public parks, it is unlikely they will do so on license plates. Indeed, in addition to the general laws that the Texas Petitioners identified against potential abuses (Pet'rs Br. 45-46), several States have provisions in the specific license-plate context restricting political messages. *See, e.g.*, Ark. Code. Ann. § 27-24-1402(d); N.D. Cent. Code § 39-04-10.13(2).

II. THE FIFTH CIRCUIT'S REASONABLE-OBSERVER TEST TO DISTINGUISH GOVERNMENT SPEECH FROM PRIVATE SPEECH CONFLICTS WITH GENERAL FIRST AMENDMENT PRINCIPLES

The Texas Petitioners offered several reasons why the divide between government speech and private speech should not rest on a reasonable observer's perspective. *See* Pet'rs Br. 27-32. The *amici* States seek to add to their analysis by illustrating that the Court's "forum" or "subsidy" cases have used three categories of scrutiny to assess laws that merely re-

fuse to subsidize certain speech, and that the Court has never adopted a "reasonable observer" test to choose between these categories of scrutiny.

A. The Court Has Adopted Three General Categories Of Scrutiny For Laws That Merely Refuse To Promote—Rather Than Directly Prohibit—Speech

Because the First Amendment's text regulates laws "abridging" the freedom of speech, an obvious difference exists between laws that directly *prohibit* speech and laws that merely *refuse to promote* speech—i.e., a difference between laws "wielding the stick of prohibition" and laws "dangling the carrot of subsidy." *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 683 (2010); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 587-88 (1998). For example, simply because the government cannot punish an individual for burning a flag, *Texas v. Johnson*, 491 U.S. 397 (1989), does not mean the government must pay for the individual's matches to do so.

A "Government 'subsidy'" of speech can take different forms. *Rust v. Sullivan*, 500 U.S. 173, 200 (1991). Sometimes the government opens its checkbook for certain speech. *See id.* at 192-93 (citing *funding* cases). Other times the government opens its property for certain speech. *See id.* at 200 (citing *forum* cases). Either way, a litigant challenging its inability to obtain the use of the government's money or property for its speech must show something *more* than the absence of that subsidy, because "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right." *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540,

549 (1983). What that "more" is depends on the nature of the denied subsidy. In this "subsidy" context, the Court has adopted three categories of scrutiny falling along a spectrum: (1) some speech subsidies must be granted on a *content-neutral* basis; (2) others may be granted in a content-based way but must be *reasonable* and *viewpoint neutral*; and (3) still others may be *viewpoint based*.

1. *Speech Subsidies That Must Be Content Neutral: Public Forums*. At one end of the spectrum, the Court scrutinizes for content neutrality laws banning speech in a "traditional public forum"—i.e., property like a park that has "immemorially been held in trust for the use of the public and, time out of mind, ha[s] been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Summum*, 555 U.S. at 469 (internal quotation marks omitted). The government may enact time, place, and manner restrictions for speech in such a forum, but laws discriminating based on the speech's content must survive strict scrutiny. *See Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). So, for example, the government may limit the noise level of all speech (no matter its content) emanating from a traditional forum, *Ward v. Rock Against Racism*, 491 U.S. 781, 790-91 (1989), but cannot enact picketing regulations for that forum allowing picketers to protest some things but not others, *see Carey v. Brown*, 447 U.S. 455, 461-62 (1980).

In addition to *traditional* forums, the government can create a public forum by putting property that has not historically facilitated speech to a new speech-promoting use. When the government creates

such a *designated* forum, the same content-neutral rules apply. *Summum*, 555 U.S. at 469. The Court has, for example, applied those rules to a theater open for all productions, *see Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 555-57 (1975), a school-board meeting open to all citizens, *see Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 174 n.6 (1976), and a school's facilities open to all groups, *see Widmar v. Vincent*, 454 U.S. 263, 267-70 (1981); *see also Cornelius*, 473 U.S. at 803.

2. *Speech Subsidies That Must Be Reasonable And Viewpoint Neutral: Nonpublic Forums*. In the middle of the spectrum, the Court analyzes subsidies designed to facilitate private speech about certain topics or by certain groups (thereby excluding other topics or groups) for both *reasonableness* and *viewpoint neutrality*. The Court has at times called this narrower subsidy a "nonpublic forum." *Davenport v. Wash. Educ. Ass'n*, 551 U.S. 177, 189 (2007). It has at other times referred to it as a "limited public forum." *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 105-06 (2001). Whatever the name, the same standard applies: Any restriction for only certain speech "must not discriminate against speech on the basis of viewpoint," and "must be 'reasonable in light of the purpose served by the forum.'" *Id.* (citations omitted).

The Court has applied this test to the use of both property and funds for private speech. As for property, the Court has applied it to a school district's decision to open its facilities to only certain topics, *see id.* at 103-07; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 392-94 (1993), and the federal government's decision to open a charitable drive to only certain charities, *see Cornelius*, 473 U.S.

at 805-12. As for funds, the Court has applied the test to a university's decision to pay certain costs of student magazines, *see Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829-37 (1995), a State's decision to subsidize only non-electioneering union speech, *see Davenport*, 551 U.S. at 188-90, and Congress's decision to subsidize only nonprofit entities that do not lobby, *see Regan*, 461 U.S. at 549-51.

3. *Speech Subsidies That Can Be Viewpoint Based: Government Speech*. At the other end of the spectrum, when the government uses its property or money to "engag[e] in [its] own expressive conduct, then the Free Speech Clause has no application." *Summum*, 555 U.S. at 467. While formal recognition of this rule may be "recently minted," *id.* at 481 (Stevens, J., concurring), "[i]t is difficult to imagine how many governmental pronouncements, dating from the beginning of the Republic, would have been unconstitutional" if the government could not commend some views while condemning others. *Block v. Meese*, 793 F.2d 1303, 1313 (D.C. Cir. 1986) (Scalia, J.). The contrary "rule excluding official praise or criticism of ideas would lead to the strange conclusion that it is permissible for the government to prohibit racial discrimination, but not to criticize racial bias; to criminalize polygamy, but not to praise the monogamous family; to make war on Hitler's Germany, but not to denounce Nazism." *Id.*

The Court has found that the government may express its views in different ways. It may use its public property to convey a message. *See Summum*, 555 U.S. at 470. It may pay "private speakers to transmit specific information pertaining to its own program." *Rosenberger*, 515 U.S. at 833; *see Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550, 560-62

(2005). And "[w]hen the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Rosenberger*, 515 U.S. at 833; *see United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194, 204-06 (2003) (plurality op.). Finally, the government may pay its own employees to express its views. *See Garcetti v. Ceballos*, 547 U.S. 410, 421-22 (2006).

B. The Court Has Never Adopted A Reasonable-Observer Test To Distinguish Between These Categories Of Scrutiny

For two reasons, the Fifth Circuit's reasonable-observer test to distinguish government speech from private speech is incompatible with the Court's cases in this area. *First*, the Court has rejected a reasonable-observer test to distinguish a designated forum from a nonpublic forum. *Second*, the Court has rejected a reasonable-observer test to distinguish private speech in a forum from government speech for purposes of the Establishment Clause. To maintain harmony among this Court's First Amendment principles, the reasonable-observer test should be rejected in the present context as well.

1. The difference between a designated forum and a nonpublic forum turns on the government's intent, not on a reasonable observer's view

This Court has adopted a well-established test to distinguish between a broader *designated forum* (access to which must be granted in a content-neutral manner) and a narrower *nonpublic forum* (access to which need only be granted in a reasonable and

viewpoint-neutral way). A similar test should be used to distinguish between *government speech* and private speech in a *nonpublic forum* because, as articulated below, both contexts share logical underpinnings. Notably, moreover, the Court's test to distinguish between these forums does *not* support the Fifth Circuit's reasonable-observer test; if anything, it shows that most specialty-license-plate programs should qualify as government speech.

To create a designated (rather than a nonpublic) forum, "the government must make an affirmative choice to open up its property for use as a public forum." *Am. Library Ass'n*, 539 U.S. at 206 (plurality op.). The Court thus "look[s] to the policy and practice of the government to ascertain whether it intended to designate a place not traditionally open to assembly and debate as a public forum." *Cornelius*, 473 U.S. at 802. In other words, "this distinction" between a designated public forum and a nonpublic forum "turns on *governmental intent*." *Forbes*, 523 U.S. at 680 (emphasis added); *see Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270 (1988) (noting that cases that have found designated "public forums to have been created" have identified a "'clear intent'" on the government's part to do so (citation omitted)). This test is illuminating here.

As an initial matter, this *government-intent* test conflicts with the Fifth Circuit's *reasonable-observer* test. Applying the government-intent test, for example, the Court has rejected the notion that a government may "create a public forum by inaction or by permitting limited discourse." *Cornelius*, 473 U.S. at 802. That is because "the government retains the choice of whether to designate its property" as a designated forum. *Forbes*, 523 U.S. at 680. Yet a rea-

sonable-observer test would often reach the opposite conclusion on those facts—the government's inaction in allowing debate could suggest to a "reasonable observer" that a designated forum had been created no matter what the government's intentions.

Indeed, cases that have found that the government did not create a designated forum likely could have come out the other way under a reasonable-observer test. In *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974), for example, the Court evaluated a city's policy banning campaign speech on the written "car cards" in its public rapid transit system. *Id.* at 299 (plurality op.). It found that no designated forum had been created by examining the city's policies (not a reasonable observer's hunches), noting that those policies rejected all campaign speech on the car cards. *Id.* at 303-04. A reasonable observer, by contrast, might easily have viewed the city as creating a broad forum because the city had permitted a wide array of car-card speech, including *not just* commercial "ads from cigarette companies, banks, savings and loan associations, liquor companies, [and] retail and service establishments" *but also* nonprofit ads from "churches, and civic and public-service oriented groups." *Id.* at 300.

Further, it makes little sense to apply different tests in these two contexts. The question of whether the government is creating a forum, and what type, is linked with the question of whether the government is instead itself speaking. *Cf. Summum*, 555 U.S. at 467 ("Were petitioners engaging in their own expressive conduct? Or were they providing a forum for private speech?"). And the Court adopted the government-intent test to distinguish broader forums from narrower ones primarily because "the govern-

ment—like other property owners—"has power to preserve the property under its control for the use to which it is lawfully dedicated.'" *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 679-80 (1992) (citation omitted). In other words, the government need not "indefinitely retain [a designated forum's] open character," *Perry Educ.*, 460 U.S. at 46, and may change that status by changing the relevant rules for the forum. Identical logic should apply for determining whether the government meant to use its property (here, license plates) to create any type of forum *at all*. If, as the Court has held, there are no "accidental" *designated* forums, *see Forbes*, 523 U.S. at 678, it is hard to see why there should be "accidental" *nonpublic* forums. Both types of forums remain under democratic control subject to democratic change concerning the forum's nature or even its existence. *See id.* at 680 (noting that the government-intent test "reflects the reality that, with the exception of traditional public fora, the government retains the choice of whether to designate its property as a forum for specified classes of speakers").

If this government-intent test applied to the States' specialty-license-plate programs, moreover, it would be inescapable that the messages permitted under those programs qualify as government speech rather than private speech. For one thing, the fact that most States retain *control* over what messages get imprinted on their license plates shows that they did not intend to create a forum for private speakers to express any viewpoints they wish. *Cf. Forbes*, 523 U.S. at 673-75 (holding that airtime on a government television station is not a forum because the state "broadcaster exercises *editorial discretion* in the selection and presentation of its programming" (em-

phasis added)). For another thing, the consequences discussed in Part I show how implausible it is to conclude that the government would intentionally turn its state-issued license plates into a forum for all competing viewpoints on a topic once it authorizes a specialty plate stating one viewpoint on that topic.

In those cases where the Court has found that the government created a nonpublic forum for private speech, by comparison, it was obvious that the government intended to do so. In *Rosenberger*, for example, the university affirmatively indicated "that the student groups eligible for [its governmental] support [were] not the University's agents, [were] not subject to its control, and [were] not its responsibility." 515 U.S. at 835. Instead, the university merely gave them a subsidy to "convey their own messages." *Id.*; *see also, e.g.*, *Cornelius*, 473 U.S. at 798-99 (noting that, while government set neutral standards for charity's speech in the combined federal campaign, the messages were the participants' own).

2. Under the Establishment Clause, a reasonable-observer test does not distinguish private speech from government speech

The test that the Court has used to distinguish private speech in a government-created forum from government speech under the *Establishment Clause* also may be useful for identifying the proper test to distinguish the same two things under the *Free Speech Clause*. After all, both clauses reside in the same First Amendment. In the Establishment Clause context, the Court has recognized that "'[t]here is a crucial difference between *government* speech endorsing religion, which the Establishment

Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.'" *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 765 (1995) (plurality op.) (quoting *Bd. of Educ. of Westside Cmty. Schs. (Dist. 66) v. Mergens*, 496 U.S. 226, 250 (1990) (plurality op.)). In this context, too, the Court has never adopted a reasonable-observer test to distinguish private speech from government speech.

In *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), for example, it applied something akin to a "control" test to distinguish private and government speech. There, the Court considered a high-school policy allowing the student body to vote on whether a student should give a pre-game message (including a prayer if the student so chose) at football games. *Id.* at 298 & n.6. The high school argued that the Establishment Clause did not prohibit this practice because the "messages [were] private student speech, not public speech," and the school had merely created a limited forum for private speech. *Id.* at 302. The Court was "not persuaded that the pregame invocations should be graded as 'private speech.'" *Id.* That was because the "invocations [were] authorized by a government policy and [took] place on government property at government-sponsored school-related events." *Id.* Further, government regulations "confine[d] the content and topic of the student's message," placing the policy outside this Court's forum cases. *See id.* at 303.

Not only that, a plurality of this Court has *expressly rejected* a reasonable-observer test to divide government speech from private speech. In *Pinette*, Ohio officials argued that they did not have to allow a private speaker (the Ku Klux Klan) to place a cross

on a public forum (the capitol square surrounding Ohio's statehouse) because it would violate the Establishment Clause. *See* 515 U.S. at 761 (plurality op.). In particular, the officials argued that the private speech should be viewed as government speech because of "the forum's proximity to the seat of government, which, they contend[ed], may produce the perception that the cross bears the State's approval." *Id.* at 763. The plurality disagreed: "It has radical implications for our public policy to suggest that neutral laws [creating a forum] are invalid whenever hypothetical observers may—*even reasonably*—confuse an incidental benefit to religion with state endorsement." *Id.* at 768. "Private religious speech cannot be subject to veto by those who see favoritism where there is none." *Id.* at 766.

The Court's later cases on this question have been consistent with this view that a reasonable-observer test cannot turn private speech into government speech. *See Salazar v. Buono*, 559 U.S. 700, 720-21 (2010) (plurality op.) ("As a general matter, courts considering Establishment Clause challenges do not inquire into 'reasonable observer' perceptions with respect to objects *on private land*." (emphasis added)); *Good News Club*, 533 U.S. at 119 (declining to "employ Establishment Clause jurisprudence using a modified heckler's veto, in which a [private] group's religious activity can be proscribed on the basis of what the youngest members of the audience might misperceive" about whether it is government speech).

Instead, the Court's cases have used a reasonable-observer test only *after* the Court concludes that the challenged speech qualifies as government speech. Even here, the appropriate test to apply *then* remains unclear. *See Salazar*, 559 U.S. at 720-21 (plu-

rality op.). Some cases suggest that a "reasonable observer" test applies to government speech, asking whether such an observer would view the government as endorsing religion. *See, e.g.*, *Cnty. of Allegheny v. ACLU of Greater Pittsburgh Chapter*, 492 U.S. 573, 630 (1989) (O'Connor, J., concurring in part and concurring the in judgment). Others suggest that the relevant inquiry concerns whether the government has coerced religious participation or belief. *See Town of Greece v. Galloway*, 134 S. Ct. 1811, 1824-27 (2014). In *Santa Fee*, for example, the Court applied both tests. After concluding that government speech was at issue, it found that a reasonable observer would view the student invocations as endorsement of prayer, *see* 530 U.S. at 305-09, and that the invocation program effectively coerced students who attended the football games to participate, *see id.* at 310-13. As these cases show, the reasonable-observer standard applies, at most, to determine only whether *admittedly* government speech survives constitutional scrutiny. It does not apply to determine whether the speech should qualify as government speech triggering the clause to begin with.

This jurisprudence, applied here, equally rebuts the Fifth Circuit's reasonable-observer test. If a reasonable observer cannot turn private speech into government speech for purposes of the Establishment Clause, the reasonable observer should not be able to turn government speech into private speech for purposes of the Free Speech Clause. Instead, the messages on state license plates qualify as government speech because they are "authorized by a government policy and take place on government property" and the States control "the content and topic of

the [license plate] message." *See Santa Fe*, 530 U.S. at 302-03.

CONCLUSION

The Court should reverse the Fifth Circuit's judgment below.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio

ERIC E. MURPHY*
State Solicitor
**Counsel of Record*
30 East Broad St., 17th Floor
Columbus, Ohio 43215
614-466-8980
eric.murphy@
ohioattorneygeneral.gov

Counsel for Amicus Curiae
State of Ohio

JANUARY 2015

APPENDIX

STATE	STATUTORY PROVISIONS
Alabama	Ala. Code §§ 32-6-64, -67 to -68 (setting forth general rules and procedures) Ala. Code §§ 32-6-70 to -114, -170 to -196, -250 to -680 (enabling specific plates)
Alaska	Alaska Stat. Ann. § 28.10.181 (setting forth general rules and enabling specific plates and categories of plates)
Arizona	Ariz. Rev. Stat. Ann. §§ 28-2401 to -2404 (setting forth general rules and procedures for special organization plates authorized before September 30, 2009) Ariz. Rev. Stat. Ann. §§ 28-2407, -2410, -2412 to -2415, -2417 to -2475 (enabling specific plates)
Arkansas	Special License Plate Act of 2005, Ark. Code Ann. §§ 27-24-101 to -111, -603 to -605 (setting forth general rules and procedures) Ark. Code Ann. §§ 27-24-201 to -214, -701 to -1422, -1601 to -1704 (enabling specific categories of plates)
California	Cal. Veh. Code § 5060 (setting forth general rules but held facially unconstitutional by a district court) Cal. Veh. Code § 5060.1 (prohibiting new plates under § 5060) Cal. Veh. Code §§ 5061-5067, 5068.1-5075 (enabling specific plates)

Colorado	Colo. Rev. Stat. §§ 42-3-207 to -208, -302, -312 (setting forth general rules and procedures) Colo. Rev. Stat. §§ 42-3-209 to -234, -237 to -247 (enabling specific plates)
Connecticut	Conn. Gen. Stat. §§ 14-19a to -19b (authorizing the adoption of regulations for the issuance of special organization and collegiate plates) Conn. Gen. Stat. §§ 14-20a to -21, -21d to -21w (enabling specific plates)
Delaware	Del. Code Ann. tit. 21, §§ 2137-2140a (enabling specific plates)
Florida	Fla. Stat. §§ 320.08053-.08056 (setting forth general rules and procedures) Fla. Stat. §§ 320.08058, .089-.0894 (enabling specific plates)
Georgia	Ga. Code §§ 40-2-60 to -60.1 (setting forth general rules and procedures) Ga. Code §§ 40-2-61 to -73, -84 to -85.3 (enabling specific plates) Ga. Code §§ 40-2-86 to -86.1 (enabling specific plates and appropriating generated revenues)
Hawaii	Haw. Rev. Stat. § 249-9.3 (setting forth general rules and procedures) Haw. Rev. Stat. § 249-9.2 (enabling military plates)
Idaho	Idaho Code §§ 49-402c to -402d (setting forth general rules and procedures) Idaho Code §§ 49-403 to -405, -414

	to -420m (enabling specific plates)
Illinois	625 Ill. Comp. Stat. § 5/3-600 (setting forth general requirements) 625 Ill. Comp. Stat. §§ 5/3-606 to -610.1, -620 to -699.13 (enabling specific plates)
Indiana	Ind. Code §§ 9-18-25-0.5 to -18-25-18 (setting forth general rules and procedures for the issuance of special group recognition plates) Ind. Code §§ 9-18-16-1 to -18-21-3, -18-23-1 to -18-24.5-5, -18-29-1 to -18-54-6 (enabling specific plates or categories of plates)
Iowa	Iowa Code § 321.34 (setting forth general rules and enabling specific plates)
Kansas	Kan. Stat. Ann. §§ 8-1,141 to -1,142 (setting forth general procedures and requirements) Kan. Stat. Ann. §§ 8-1,139 to -1,140, -1,145 to -1,146, -1,148 to -1,173 (enabling specific plates)
Kentucky	Ky. Rev. Stat. Ann. §§ 186.162-.164, (setting forth general procedures and requirements) Ky. Rev. Stat. Ann. §§ 186.166, .172, .1722 (enabling specific plates)
Louisiana	La. Rev. Stat. Ann. § 47:463 (setting forth general requirements) La. Rev. Stat. Ann. §§ 47:463.6, :463.9, :463.14, :463.22-.32, :463.36-.182, :490.1-.28 (enabling specific plates)
Maine	Me. Rev. Stat. tit. 29-A, §§ 468-469

	(setting forth general requirements and procedures) Me. Rev. Stat. tit. 29-A, §§ 454 to 456-G, 460 to 460-A, 515-B, 519, 523 to 524-B (enabling specific plates)
Maryland	Md. Code Ann., Transp. § 13-619 (setting forth general requirements and procedures) Md. Code Ann., Transp. §§ 13-618, -619.1 to -619.2 (enabling specific plates)
Massachusetts	Mass. Gen. Laws ch. 90, § 2f (setting forth general requirements and procedures, and listing various organizations eligible for consideration) Mass. Gen. Laws ch. 90, § 2e (enabling specific plates and appropriating their fees to corresponding funds)
Michigan	Mich. Comp. Laws §§ 257.811d-.811f, .811h (setting forth general requirements and procedures) Mich. Comp. Laws §§ 257.811i-.811y (enabling specific plates)
Minnesota	Minn. Stat. §§ 168.12, .1293 (setting forth general requirements and procedures) Minn. Stat. §§ 168.121-.1255, .129, .1295-.1299 (enabling specific plates)
Mississippi	Miss. Code Ann. §§ 27-19-44 to -45 (setting forth general requirements and procedures)

	Miss. Code Ann. §§ 27-19-46, -49 to -56.5, -56.7 to -56.8, -56.10, -56.12 to -56.389 (enabling specific plates)
Missouri	Mo. Rev. Stat §§ 301.2998-.2999, .3150-.3154 (setting forth general requirements and procedures) Mo. Rev. Stat. §§ 301.134, .145, .441, .443-.451, .453-.454, .456-.481, .3032, .3040-.3148, .3161-.3172 (enabling specific plates)
Montana	Montana Collegiate License Plates Act, Mont. Code Ann. §§ 61-3-461 to -468 (authorizing collegiate plates) Montana Generic Specialty License Plate Act, Mont. Code Ann. §§ 61-3-472 to -481 (setting forth general requirements and procedures for specialty plates) Mont. Code Ann. § 61-3-458 (authorizing special plates for certain military personnel, veterans, spouses, and families)
Nebraska	Neb. Rev. Stat. §§ 60-3,104.01 to -3,104.02 (setting forth general requirements and procedures) Neb. Rev. Stat. §§ 60-3,122 to -3,128 (enabling specific plates)
Nevada	Nev. Rev. Stat. §§ 482.367002-.36705, .38272-.38279 (setting forth general requirements and procedures) Nev. Rev. Stat. §§ 482.3672-.37945 (enabling specific plates)
New Hampshire	N.H. Rev. Stat. Ann. §§ 261:86 to :87-c, 261:91 to :91-a, 261:97-a to

	:97-f (enabling specific plates)
New Jersey	N.J. Stat. Ann. §§ 39:3-27.35 to -27.40 (setting forth general requirements and procedures) N.J. Stat. Ann. §§ 39:3-27.8, -27.13 to -27.18, -27.24 to -27.25, -27.29 to -27.34, -27.41 to -27.145, -33.10 (enabling specific plates)
New Mexico	N.M. Stat. Ann. § 66-3-424 (setting forth general requirements and procedures) N.M. Stat. Ann. §§ 6-3-405, -409, -411 to -422, -424.1 to -424.31 (enabling specific plates)
New York	N.Y. Veh. & Traf. Law §§ 404, 404-oo (setting forth general requirements and procedures) N.Y. Veh. & Traf. Law §§ 404-b to 404-w (enabling specific plates)
North Carolina	N.C. Gen. Stat. §§ 20-63(b1), 20-79.3a, 20-79.7 to -79.8 (setting forth general requirements and procedures) N.C. Gen. Stat. § 20-79.4 to -79.6, -81.12 (enabling specific plates and categories of plates)
North Dakota	N.D. Cent. Code § 39-04-10.13 (setting forth general requirements and procedures for organization plates) N.D. Cent. Code §§ 39-04-10.5, -10.8 to -10.12, -10.14 (enabling specific plates)
Ohio	Ohio Rev. Code §§ 4501.21, 4503.77-.79 (setting forth general requirements and procedures)

	Ohio Rev. Code §§ 4503.431-.433, .46-.481, .491-.591, .67-.762, .85-.96 (enabling specific plates)
Oklahoma	Okla. Stat. tit. 47, §§ 1135.1, .7-.8 (setting forth general requirements and procedures) Okla. Stat. tit. 47, §§ 1135.2-.3, .5-.6 (enabling specific plates and categories of plates)
Oregon	Or. Rev. Stat. §§ 805.202-.206 (setting forth general requirements and procedures, and enabling certain plates) Or. Rev. Stat. §§ 805.100-.117, .220-.230, .255-.274 (enabling specific plates)
Pennsylvania	75 Pa. Cons. Stat. Ann. §§ 1341-1341.1, 1370 (setting forth general authorizations and procedures) 75 Pa. Cons. Stat. Ann. §§ 1339, 1342, 1345-46, 1348-1369.2 (enabling specific plates)
Rhode Island	R.I. Gen. Laws § 31-3-94 (setting forth rules for expiration of statutory authorization for special plates) R.I. Gen. Laws §§ 31-3-15 to -17, -17.4, -46 to -48.1, -53, -72, -76, -78 to -80, -84 to -91, -93, -95 to -99, -102 to -103 (enabling specific plates)
South Carolina	S.C. Code Ann. §§ 56-3-8000 to -8110 (setting forth general requirements and procedures) S.C. Code Ann. §§ 56-3-1510 to -1660, -1750 to -1880, -2150 to

	-2180, -2540 to -2550, -2810 to -2840, -3310 to -5200, -5350 to -7950, -8200 to -11310, -11510 to -13610 (enabling specific plates)
South Dakota	S.D. Codified Laws §§ 32-5-175 to -178 (setting forth general requirements and procedures) S.D. Codified Laws §§ 32-5-113 to -125, -154 to -168 (enabling specific plates and categories of plates)
Tennessee	Tenn. Code Ann. §§ 55-4-201 to -210, -214 to -220 (setting forth general requirements, procedures, and provisions for allocation of revenues) Tenn. Code Ann. §§ 55-4-202, -212, -221, -225 to -231, -233 to -299 (enabling specific plates)
Texas	Tex. Transp. Code Ann. §§ 504.008, .601-.6012, .702-.802 (setting forth general requirements and procedures) Tex. Transp. Code Ann. §§ 504.301-.415, .511-.515, .602-.663 (enabling specific plates)
Utah	Utah Code Ann. §§ 41-1a-418 to -419 (setting forth general requirements and procedures) Utah Code Ann. §§ 41-1a-420 to -422 (addressing specific categories of plates)
Vermont	Vt. Stat. Ann. tit. 23, § 304 (setting forth general requirements and procedures) Vt. Stat. Ann. tit. 23, §§ 304, 304b-

	304c, 515a-515c (enabling specific plates)
Virginia	Va. Code Ann. § 46.2-725 (setting forth general requirements and procedures) Va. Code Ann. §§ 46.2-727 to -728.3, -735 to -749.130 (enabling specific plates)
Washington	Wash. Rev. Code §§ 46.18.005, .060 (imposing a temporary moratorium on new plates until July 1, 2015) Wash. Rev. Code §§ 46.18.100-.150 (setting forth general requirements, procedures) Wash. Rev. Code §§ 46.18.200-.215, .225-.270, .280-.295 (enabling specific plates)
West Virginia	W. Va. Code § 17a-3-14 (setting forth general requirements and procedures, and enabling specific plates)
Wisconsin	Wis. Stat. § 341.14 (setting forth general requirements and procedures, and enabling specific plates)
Wyoming	Wyo. Stat. Ann. §§ 31-2-215 to -220, -222, -229 (enabling specific plates)