No. 22-1282

In the
United States Court of Appeals
for the Fourth Circuit

NORTH CAROLINA DIVISION OF
SONS OF CONFEDERATE VETERANS, INC.

Plaintiff-Appellant,

v.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, *et al.*;

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of North Carolina

BRIEF OF DEFENDANTS-APPELLEES

JOSHUA H. STEIN
Attorney General

Sarah G. Boyce
Deputy Solicitor General

Kathryne E. Hathcock
Special Deputy Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

Counsel for Defendants-Appellees

CORPORATE DISCLOSURE STATEMENT

I certify, pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, that appellees are not a publicly held corporation, a publicly held entity, or a trade association, and that no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation.

Dated: August 10, 2022

/s/ Sarah G. Boyce
Sarah G. Boyce

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Rules

Other Authority

ISSUE PRESENTED

Did the district court err in granting NCDOT's motion to dismiss when:

1. *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), and *ACLU v. Tennyson*, 815 F.3d 183 (4th Cir. 2016), squarely foreclose the North Carolina Division of the Sons of Confederate Veterans' ("SCV's") First Amendment Claim;

2. SCV's due-process and equal-protection claims are entirely conclusory; and

3. SCV lacks a cause of action for its statutory claims and advances a reading of the key state statutes that is difficult to reconcile with the government-speech doctrine?

INTRODUCTION

It is difficult to imagine a claim more obviously foreclosed by precedent than the claim at the heart of this case. In early 2021, the North Carolina Department of Transportation ("NCDOT") announced that it would no longer issue specialty license plates bearing the Confederate battle flag because it did not want state property to be used to convey an offensive message. J.A. 44. SCV sued, alleging that the State's decision denied its members "their right to freedom of speech." J.A. 36 (Compl. ¶ 33).

This exact First Amendment claim has already been categorically rejected, both by this Court and the Supreme Court. In 2015, the Texas division of the Sons of Confederate Veterans challenged that State's refusal to issue the group a license plate displaying the Confederate flag. *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 206 (2015). The Supreme Court deemed Texas's actions constitutional, holding that specialty license plates communicate government speech and therefore fall outside the bounds of the First Amendment. *Id.* at 219-20. A year later, this Court expressly applied

that holding to reject a free-speech claim involving specialty plates in North Carolina. *ACLU v. Tennyson*, 815 F.3d 183, 185 (4th Cir. 2016).

Perhaps because of these clear-cut precedents, SCV now seems to try to obscure the focus of its lawsuit on appeal. Although much of SCV's opening brief is a carbon copy of its briefing at the motion-to-dismiss stage, SCV has now deleted several of its references to "free speech" and rewritten some of its headings to avoid mentioning the First Amendment. *Compare* Br. 7, *with* Dkt. No. 10, at 6 (Brief in Opposition to Defendants' Motion to Dismiss).

This befuddling strategy falls flat. Deleting a handful of words and changing a few headings cannot alter the allegations in SCV's initial complaint. Those allegations plainly rely primarily on the First Amendment. Try as it might, SCV cannot reframe its lawsuit on appeal and evade the precedents that squarely foreclose its principal claim. *Walker*, 576 U.S. at 219-20; *Tennyson*, 815 F.3d at 185.

Moreover, even if this Court were to focus on SCV's other claims, they can be of little help to the group. SCV's complaint raises conclusory due-process and equal-protection claims, but contains no

detail whatsoever to support those claims. The district court rightly found these threadbare allegations legally insufficient.

Finally, SCV's complaint alleges that NCDOT's refusal to print the Confederate battle flag on state property violates North Carolina's license-plate statutes. This claim is impossible to square with the government-speech doctrine. But it also suffers from two even more fundamental problems. First, SCV lacks a cause of action to sue under the state statutes that it identifies. And second, sovereign immunity bars this federal Court from entering an injunction compelling NCDOT officials to comply with state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 124-25 (1984).

For all these reasons, the district court's dismissal of SCV's complaint should be affirmed. North Carolina did not violate any law—the First Amendment or any other—when it decided to stop issuing license plates likely to offend drivers on roads throughout the State.

STATEMENT OF FACTS

A. North Carolina's License Plate Regime

North Carolina motorists are required to display valid license plates while traveling on the State's public roads. N.C. Gen. Stat. § 20-

111(1). These license plates are the "property of the State" and may be reclaimed by the Division of Motor Vehicles ("DMV"), a subdivision of NCDOT. *See id.* § 20-63(a).

North Carolina license plates typically take one of two forms. First, North Carolina offers three different non-personalized plates: (a) "First in Flight," commemorating the Wright Brothers' first flight on the dunes of Kitty Hawk; (b) "First in Freedom," commemorating North Carolina's role in declaring independence from Great Britain during the early stages of the American Revolution; and (c) the "National/State Mottos" plate, which, as its name suggests, contains "In God We Trust" and "To Be Rather Than To Seem." *Id.* § 20-63(b). Second, drivers can obtain "special registration plates," also known as "specialty plates." *Id.* § 20-79.4. Specialty plates feature designs representing a particular interest or affinity group. *Id.* §§ 20-79.4(b); 20-81.12. Any of these license plates—both specialty plates and the three default options—can be issued as vanity plates and personalized to "bear the letters or letters and numbers requested by the owner," so long as the proposed message is not "offensive to good taste and decency." *Id.* §§ 20-79.4(b)(189); 20-81.12(c).

This case involves specialty plates. In North Carolina, every specialty license-plate design must first be approved by the General Assembly. *Id.* § 20-79.3A. To obtain legislative approval, an applicant must gather applications and fees from between 300 and 500 individuals who intend to purchase a plate with the same design.[1] On or before March 15 of each year, the DMV submits to the General Assembly a report identifying each of the groups that have applied for a specialty license plate. *Id.* § 20-79.3A(c); *see also* N.C. Dep't of Transp., *Guidelines for a New Specialty License Plate Category*, https://bit.ly/3cz1j87. The General Assembly then decides whether or not to authorize the specialty license plate in question. N.C. Gen. Stat. § 20-79.3A(d)-(e). If the General Assembly does wish to authorize a plate, the authorization is codified in North Carolina's General Statutes. *E.g.*, *id.* § 20-79.4(b). Following authorization, an applicant must submit several items, including the proposed "final artwork for the plate," which the DMV reviews. *Id.* § 20-79.3A(d).

[1] Whether a particular plate requires 300 or 500 paid applications depends on whether the plate has a background described in N.C. Gen. Stat. § 20-63(b) or § 20-63(b1), respectively. N.C. Gen. Stat. § 20-79.3A(a)(1)-(2).

North Carolina began issuing specialty plates in 1937 and currently offers more than 200 such plates. N.C. Code of 1935 § 2621(230) (Supp. 1937) (authorizing a specialty plate for the North Carolina National Guard); N.C. Gen. Stat. §§ 20-63(b1), 20-79.4(b) (listing current offerings). Some of these plates celebrate the natural beauty of the State. *E.g.*, N.C. Gen. Stat. § 20-63(b1)(22) ("Friends of the Great Smoky Mountains National Park"); *id.* § 20-63(b1)(30) ("Mountains-to-Sea Trail, Inc."); *id.* § 20-63(b1)(37) ("North Carolina State Parks"); *id.* § 20-79.4(b)(263) ("Wrightsville Beach"). Others promote the State's various sports teams or advocate on behalf of other causes. *E.g.*, *id.* § 20-79.4(b)(34) ("Carolina Panthers"); *id.* § 20-79.4(b)(7) ("ALS research"); *id.* § 20-79.4(b)(53) ("Colorectal Cancer Awareness").

As relevant here, North Carolina has also authorized certain "civic club[s]" to obtain specialty plates. *Id.* § 20-79.4(b)(44). If a civic club wants the DMV to issue a specialty plate for its club, it must gather 300 signatures from interested members, provide proof of nonprofit status, and submit a draft design of the proposed plate "bear[ing] a word or phrase identifying the civic club and the emblem of the civic club." *Id.*;

id. § 20-79.4(a3). The DMV has approved plates from a range of civic clubs, including the Jaycees, Kiwanis Club, Optimist Club, Rotary Club, and Shrine Club. *Id.*

B. Procedural History

SCV qualifies as a civic club for purposes of obtaining a specialty plate, *N.C. Div. of Sons of Confederate Veterans v. Faulkner*, 509 S.E.2d 207 (N.C. Ct. App. 1998), and the State has issued the organization plates in the past. J.A. 69 (Compl. ¶ 25).

In early 2021, NCDOT decided to change that practice. Consequently, NCDOT sent SCV a letter, notifying the organization that the DMV would "no longer issue or renew specialty license plates bearing the Confederate battle flag or any variation of that flag." J.A. 78 (Letter from William A. Marsh III, Sr., Deputy General Counsel, NCDOT, to James Barrett Wilson & Associates, Counsel for SCV (Jan. 11, 2021)). NCDOT cited the Supreme Court's decision in *Walker*, which held that "specialty license plates constitute government speech." J.A. 78. NCDOT went on: "When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says." *Id.* (quoting *Walker*, 576 U.S. at 207). Because "license plates

bearing the Confederate battle flag have the potential to offend those who view them," NCDOT explained that it had decided that continuing to issue such plates would be "inappropriate." *Id.*

NCDOT noted that "efforts [had been] made . . . to work with SCV to develop artwork . . . that does not contain the Confederate battle flag." *Id.* And the agency expressed openness to "considering alternative artwork for review and to resuming issuance of specialty plates for members of SCV" in the future. *Id.*

After receiving this letter, SCV sued in state court.[2] J.A. 30. (Complaint). SCV alleged a range of federal constitutional claims, including First Amendment, due-process, and equal-protection violations. J.A. 36-40. SCV further alleged that NCDOT had violated state law—specifically, the State's license-plate statutes and Article I, § 19 of the North Carolina Constitution. *Id.* SCV demanded a permanent injunction compelling DMV to issue the plates, a declaratory judgment, and attorney's fees. J.A. 40.

[2] SCV sued NCDOT, the North Carolina Secretary of Transportation, the DMV, and the North Carolina Commissioner of Motor Vehicles. J.A. 30. For simplicity's sake, this brief often simply refers to "NCDOT" or the "DMV," but, technically, this appeal involves all four parties.

NCDOT removed the suit to federal court and then filed a motion to dismiss for failure to state a claim. J.A. 7-13, 87.

The district court granted NCDOT's motion to dismiss in full. J.A. 110. The court explained that SCV's First Amendment allegations were squarely controlled by two cases: the Supreme Court's decision in *Walker* and this Court's decision in *Tennyson*. J.A. 98-103. As the court explained, those cases establish that "specialty license plates issued under North Carolina's program amount to government speech," enabling the State "to reject license plate designs that convey messages with which it disagrees." J.A. 99 (quoting *Tennyson*, 815 F.3d at 185). SCV could not escape these cases' "plain and unequivocal holding[s]," the court said. J.A. 99, 100-101, 103.

The court then quickly dismissed SCV's other federal claims. Turning first to SCV's due-process claim, the court found that this claim rose and fell with SCV's First Amendment claim. As the court explained, the only possible "recognizable liberty interest" that SCV had asserted was its free-speech right, and the court had already rejected the validity of that interest in the context of this case. J.A. 105. Moreover, the court said, even if SCV could identify a liberty interest

that implicated the Due Process Clause, it had not "plausibly allege[d] that North Carolina engaged in a constitutionally deficient process," given the "advance notice" that SCV had received of NCDOT's decision and the State's extensive efforts to find a "mutually agreeable resolution" with SCV prior to terminating the plates. J.A. 105-106.

As for SCV's equal-protection claim, the district court held that it failed for two reasons. J.A. 107-109. First, SCV had failed to demonstrate that it had been treated differently from any other similarly situated groups. J.A. 108. As the court explained, anyone who tried to obtain a license plate featuring the Confederate battle flag would "similarly be unable to receive [one]." J.A. 108. The court also pointed out that NCDOT was likely "not motivated by an improper discriminatory intent against" SCV, given the agency's willingness to consider other SCV designs without the Confederate battle flag. J.A. 108. Second, the court applied rational-basis review to NCDOT's new policy and found that it passed. J.A. 108-109. Refusing to print license plates because they are offensive "is rationally related to North Carolina's legitimate purpose of respectfully celebrating the State's diverse communities," the court held. J.A. 109.

Lastly, the district court dismissed SCV's state-law claims. The court cited SCV's admission that its parallel constitutional claims were substantively equivalent and found that, because SCV's federal constitutional claims had failed, its analogous state constitutional claims failed as well. J.A. 107 n.9 (dispensing with SCV's state due-process claim); J.A. 110 n.10 (dispensing with SCV's state equal-protection claim). The court also summarily dismissed SCV's request for a declaratory judgment recognizing a violation of North Carolina statutory law. J.A. 103 n.6. That claim, the court explained, had been mooted by the court's holding that "North Carolina's specialty license plate statutory program facilitates government speech, and thus [SCV's] members are not entitled to receive specialty license plates featuring [SCV's] insignia." *Id.*

SCV timely appealed the dismissal of its claims. J.A. 112.

SUMMARY OF THE ARGUMENT

SCV's complaint argues that North Carolina violated the group's free-speech rights when the NCDOT announced that it would no longer issue specialty license plates bearing the Confederate battle flag. This argument is not a novel one. Rather, as the court below held, it is an

argument that has already been rejected by a pair of opinions—one from this Court and another from the Supreme Court. *Walker*, 576 U.S. 200; *Tennyson*, 815 F.3d 183. Together, those opinions hold that specialty license plates in North Carolina communicate government speech, which does not implicate the First Amendment. *Walker*, 576 U.S. at 219-20; *Tennyson*, 815 F.3d at 185. Consequently, North Carolina is "free to reject license plate designs that convey messages with which it disagrees," including plate designs containing hateful and offensive images. *Tennyson*, 815 F.3d at 185.

Unable to distinguish these clear precedents, SCV tries a different tack on appeal. SCV appears to argue that North Carolina's *specialty-plate statutes* are government speech to which the district court had an obligation to defer. Br. 7-11. SCV thus urges this Court to focus most of its attention on those state statutes, instead of the First Amendment. This statutory focus, SCV insists, will allow this Court to avoid the core constitutional issue.

This argument is not persuasive. First of all, the Court need not be especially cautious about the free-speech issue at the heart of this case, given the clarity of the precedents that control it. *Walker*, 576

U.S. at 219-20; *Tennyson*, 815 F.3d at 185. But even if there were reason for caution, shifting the focus away from SCV's free-speech claim can do little to strengthen the group's case, for all of its other scattershot claims are equally tenuous.

To start, SCV's complaint also raised due-process and equal-protection claims under the federal constitution. Yet these constitutional claims were entirely conclusory: SCV's complaint simply asserted that the constitutional clauses had been violated, without including any allegations whatsoever in support. J.A. 36, 39 (Compl. ¶¶ 38-39, 54-55). The district court properly held that these bare legal conclusions were inadequate to state a claim.

SCV's initial complaint also included a statutory claim, which SCV now seems to interweave with its free-speech claim. J.A. 35, 37-39 (Compl. ¶¶ 28, 30, 45, 51-53, 56). This state claim, too, was properly dismissed below. According to SCV, state law strips the DMV of any discretion over specialty plates. In its view, as long as an affinity group satisfies the statutory requirements, the DMV has no choice but to issue the group a plate with their preferred design. This proposed interpretation—which would mean that the State could be forced to

issue license plates bearing all manner of offensive or obscene images—cannot be correct purely as a matter of common sense. But even if SCV had a plausible reading of state law, the group would still face two insurmountable problems: First, North Carolina law does not create a private right of action to sue under the State's specialty-plate regime. And second, even if it did, this Court would lack jurisdiction to enter SCV's desired relief because of the State's sovereign immunity. *Pennhurst*, 465 U.S. at 124-25. The district court therefore properly dismissed SCV's statutory claims as well.

ARGUMENT

Standard of Review

This Court reviews *de novo* a district court's grant of a motion to dismiss. *Rockville Cars, LLC v. City of Rockville, Md.*, 891 F.3d 141, 145 (4th Cir. 2018). To survive a motion to dismiss, a "complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim is "plausible on its face" if a plaintiff can demonstrate more than "a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Iqbal*, 556 U.S. at 678). "[A] formulaic

recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Nor will bare legal conclusions or "naked assertions devoid of further factual enhancement." *Iqbal*, 556 U.S. at 678 (cleaned up).

Discussion

I. SCV Has Not Stated a Valid First Amendment Claim.

Rarely is the application of precedent as straightforward as in this appeal. According to SCV, the State's decision to stop issuing specialty plates bearing a Confederate flag "den[ies] . . . SCV and its members their right to freedom of speech." J.A. 36 (Compl. ¶ 33). But this precise First Amendment argument has been rejected, both by this Court and the Supreme Court—and those decisions were both issued in the last several years. *Walker*, 576 U.S. at 219 (2015); *Tennyson*, 815 F.3d at 185 (2016).

SCV attempts to evade this dispositive precedent, first by distinguishing *Walker*, Br. 18-20; then by citing *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022), a case the Supreme Court decided this past Term; and finally by redirecting the Court's attention to the

group's state-law claims. Each of these efforts falls flat. SCV's First Amendment claim was properly dismissed.

A. SCV's First Amendment claim is foreclosed by precedent from this Circuit and the Supreme Court.

Just a few Terms ago, the Supreme Court decided the exact First Amendment question presented here—in a case involving an application for a specialty license plate bearing the Confederate battle flag, no less. *Walker*, 576 U.S. at 203-04. In that case, *Walker*, the Supreme Court held that specialty license plates constitute government speech and, thus, are "not subject to scrutiny under the Free Speech Clause." *Id.* at 209 (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 464 (2009)).

The Supreme Court based this conclusion on a three-part test that evaluated: (1) the history of license plates as a means of communicating messages from the government, (2) the extent to which the public identifies the messages on license plates with the government, and (3) the degree of control exercised over the messages conveyed on specialty plates. *Id.* at 210-14. Each of these three factors, the Court said, helps confirm that specialty license plates communicate government speech. *Id.* First, license plates "long have communicated messages from the

States." *Id.* at 210-11. Second, because "license plates are, essentially, government IDs," they "convey government agreement with [any] message [they] display[ ]." *Id.* at 212-13. And third, States typically "maintain[ ] direct control over the messages conveyed on [their] specialty plates," approving designs before they can appear. *Id.* at 213. "These considerations, taken together, convince[d]" the Court that Texas could not be compelled to issue a specialty plate communicating a message with which it disagreed. *Id.* at 213-14, 219-20.

As the court below correctly recognized, the *Walker* holding controls this case. J.A. 100. Just as a specialty license plate in Texas conveys government speech, so, too, does a specialty plate in North Carolina.

This conclusion follows, in part, from the fact that the three-part test that *Walker* articulated points in the same direction for specialty plates in Texas and specialty plates in North Carolina. North Carolina—like Texas—has long used license plates to communicate various messages. *See Walker*, 576 U.S. at 210-11; *see also supra* pp. 6-8 (summarizing North Carolina's history). North Carolina plates—like Texas plates—"are, essentially, government IDs." *Walker*, 576 U.S. at

212. And North Carolina—like Texas—has "final approval authority" over license plate designs. *Id.* at 213. These three factors make clear that North Carolina enjoys just as much latitude to deny offensive specialty license plates as Texas does.

But the conclusion that *Walker* applies equally in Texas and North Carolina also follows from the fact that *this Court has already explicitly said so*. In *Tennyson*, the Fourth Circuit applied *Walker* to assess whether "specialty license plates issued under North Carolina's program amount to government speech." 815 F.3d at 185. *Tennyson* arose out of North Carolina's 2011 decision to offer residents a "Choose Life" specialty plate, without issuing an analogous pro-choice plate. *Id.* at 184. This Court approved the State's decision, explaining that "the *Walker* Court's analysis is dispositive." *Id.* at 185. Because North Carolina's specialty-plate program is "substantively indistinguishable from that in *Walker*," the Court said, "North Carolina is . . . free to reject license plate designs that convey messages with which it disagrees." *Id.*

If *Walker* alone were not enough to doom SCV's First Amendment claim, *Tennyson* surely is. Its holding is clear: North Carolina does not

violate the First Amendment by rejecting specialty-plate messages that the State does not wish to convey. *Tennyson*, 815 F.3d at 185. The district court rightly applied this holding to approve the State's actions in ceasing to issue specialty plates bearing the Confederate flag.[3]

B. SCV's arguments to the contrary are not persuasive.

SCV has no answer for *Tennyson* and, in fact, declines to cite it at all. As for *Walker*, SCV does acknowledge that decision, but insists that it should not control the outcome here. SCV's various efforts to undercut *Walker* all fall short.

1. *Walker* is not distinguishable.

One of SCV's first strategies is to try to distinguish *Walker*. Br. 18-20. "The statutory scheme considered in *Walker* [was] permeated with discretion," SCV explains, whereas, in its view, North Carolina does not grant the DMV the same kind of discretion. Br. 19.

The first rejoinder to this argument, of course, is *Tennyson*. This Court has already looked at North Carolina's specialty-plate regime and

[3] SCV briefly attempts to analyze specialty license plates "under the public forum doctrine," though it simultaneously maintains that any such analysis "is unnecessary." Br. 22. NCDOT agrees with this assertion. Because the language on specialty plates is government speech—not private speech—the Supreme Court's "precedents regarding forums for private speech" are irrelevant. *Walker*, 576 U.S. at 209.

held that, under *Walker*, specialty plates in North Carolina convey government speech. *Tennyson*, 815 F.3d at 185. That decision binds this panel. *Etheridge v. Norfolk & Western Ry. Co.*, 9 F.3d 1087, 1090 (4th Cir. 1993) ("A decision of a panel of this court becomes the law of the circuit and is binding on other panels unless it is overruled by a subsequent en banc opinion of this court or a superseding decision of the Supreme Court." (cleaned up)).

But even setting *Tennyson* aside, SCV's scrutiny of the Texas and North Carolina regimes illuminates—at most[4]—a distinction that makes no difference. The test set forth in *Walker* does not consider whether a State's DMV has discretion over license plate designs. Instead, *Walker* asks whether the government "maintains direct control over the messages conveyed on its specialty plates." 576 U.S. at 213.

There can be no doubt that North Carolina retains the requisite degree of direct control. *See* J.A. 102-103. In fact, even Judge Wynn, who dissented in *Tennyson*, agreed that North Carolina retains sufficient control over specialty plates to satisfy the third prong of the

[4] State Respondents do not concede that North Carolina law affords the DMV no discretion. *See infra* Part III.C.

Walker test. *Tennyson*, 815 F.3d at 188 (Wynn, J., dissenting) ("[R]egarding the third factor, state control over the messages conveyed on specialty plates, here [in North Carolina], as in *Walker,* the state government controls the final wording and appearance of specialty plates."). This conclusion accords with state law: North Carolina law imposes design requirements for all license plates in the State, whether specialty plates or otherwise. *E.g.,* N.C. Gen. Stat. § 20-63(b) (standard plates must include the "name of the State of North Carolina . . . the year number for which it is issued or the date of expiration," and the phrase "First in Flight," "First in Freedom," or another "National/State Motto[ ]"); *id.* at § 20-79.4(a3) (setting forth certain design requirements for specialty plates). And drivers cannot obtain any specialty plate that has not been authorized by the General Assembly. *Id.* § 20-79.3A. The State, in other words, has "final approval authority" over any message that appears on a state license plate, *Walker*, 576 U.S. at 213, and SCV does not argue otherwise. *Walker* requires no more.

2. *Shurtleff* cannot help SCV.

SCV also points to the Supreme Court's recent decision in *Shurtleff****Error! Bookmark not defined.*** for support. Br. 19-21

(quoting *Shurtleff*, 142 S. Ct. at 1589-90). The gist of SCV's argument seems to be that, under the test set forth in *Shurtleff*, specialty plates in North Carolina cannot constitute government speech, notwithstanding the Court's holding in *Walker*. *See* Br. 21.

SCV is incorrect. *Shurtleff* evaluated Boston's practice of allowing private groups to fly flags outside City Hall. 142 S. Ct. at 1587. A group called Camp Constitution sought to fly a Christian flag, and Boston rejected the request. *Id.* at 1587-88. The Supreme Court held that "Boston's flag-raising program does not express government speech," and, thus, that "the city's refusal to let . . . Camp Constitution fly their flag" amounted to unconstitutional viewpoint discrimination. *Id.* at 1593.

Importantly for our purposes, *Shurtleff* reached this conclusion by citing *Walker* and then carefully applying its three-factor test. *Id.* at 1590-93. The Court said nothing to suggest that it meant to modify the *Walker* framework. To the contrary, it made clear that it was simply applying that "holistic inquiry" in a new factual context: flags in front of government buildings. *Id.* at 1589-90. *Shurtleff* therefore offers no reason to believe that the Supreme Court would appraise specialty

license plates any differently today than it did seven years ago in *Walker*.

The decision below bolsters this analysis of *Shurtleff*'s relevance. After the Supreme Court granted certiorari in *Shurtleff*, SCV asked the district court to stay this case until the Supreme Court issued its decision. J.A. 87. The district court declined. J.A. 93-94. "The factual distinctions between the instant case and *Shurtleff* are stark," the court said. J.A.92. "This case involves license plates. *Shurtleff* involves flags." J.A. 92-93. Moreover, the court explained, "the *Shurtleff* petitioners [had] not fundamentally challenged" the well-settled government-speech framework. J.A. 93. For those reasons, the court anticipated that *Shurtleff* was unlikely to alter the holding from *Walker*. J.A. 93. This prediction proved prescient. The Supreme Court's opinion in *Shurtleff* did not undermine *Walker* in any way—to the contrary, it reaffirmed *Walker* as a key government-speech precedent. *See Shurtleff*, 142 S. Ct. at 1589-93. Post-*Shurtleff*, then, the messages on specialty license plates remain government speech, just as the court below expected. J.A. 92-93.

3. North Carolina state law does not alter the *Walker* framework.

SCV makes one final argument against holding that specialty license plates are government speech. Though this argument is somewhat hard to follow, it seems to proceed as follows: North Carolina's state statutes are *themselves* government speech articulating the State's "public policy" with respect to license plates. Br. 7-11. Under those state laws, the State's "public policy" is to deny the DMV any discretion to deny offensive license-plate designs. Br. 10. The DMV's decision to stop issuing specialty plates with a Confederate battle flag on them thus *cannot* be government speech, because that kind of discretionary decision would conflict with the State's public policy under state law. Br. 10.

Though SCV tries gamely to cloak this argument in the language of the government-speech doctrine, its effort misses the mark. By SCV's logic, every time a state agency misapplies a state statute, that agency action would run headlong into the government-speech doctrine and would give rise to a constitutional claim under the First Amendment. That convoluted analysis is not the law. The First Amendment protects *private citizens* from government action that encroaches on their free-

speech rights. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). It is simply not implicated when the *government* speaks, even if the government happens to communicate two messages that contradict one another, as SCV wrongly claims happened here. *Walker*, 576 U.S. at 207-08.

In reality, SCV's "government speech" argument is little more than an allegation that the DMV has violated state law. In SCV's view, North Carolina state law does not afford the DMV discretion to deny specialty-plate applications, and, thus, the DMV was wrong to deny SCV its preferred plate. The Constitution has nothing to say on that question of state law. *See infra* Part III (addressing the state-law question and explaining why SCV's argument under state law also fails). SCV has therefore failed to adequately plead a violation of the First Amendment.

* * *

The Supreme Court's decision in *Walker* and this Court's decision in *Tennyson* are dispositive here. The district court therefore correctly dismissed SCV's First Amendment claim, and its decision should be affirmed.

II. The District Court Properly Dismissed SCV's Other Federal Claims.

The district court also properly dismissed SCV's claims under the Due Process and Equal Protection Clauses. SCV cites both clauses in its complaint, but it fails to include any allegations that would seem to support a claim under either clause. J.A. 36 (Compl. ¶¶ 38-39). Simply invoking a constitutional provision is wholly inadequate to survive a motion to dismiss, as the district court rightly found.

A. The district court properly dismissed SCV's due-process claim.

SCV's complaint fails to clarify whether the group intends to raise a substantive or procedural due-process claim, and its appellate brief does little to clarify the issue. Either way—or, alternatively, if SCV intends to raise *both* kinds of due-process claims—the group has failed to state a claim.[5]

First, although SCV's briefing evokes the language of substantive due process, Br. 28, SCV itself seems to acknowledge that it has not

[5] SCV seems to rely on the Fifth Amendment to support its due-process claims, J.A. 36 (Compl. ¶ 38), but, as the district court correctly held, the Fifth Amendment does not apply to state action. J.A. 104 n.7; *see also Malloy v. Hogan*, 378 U.S. 1, 8 (1964). Even if SCV had properly cited the Fourteenth Amendment, SCV's due-process claims would still be deficient. *See infra* Part II.A.

adequately pled such a claim. Br. 29 ("Given the bare allegations in its Complaint, Plaintiff has not asserted facts plausibly giving rise to a substantive due process claim."); *see also* J.A. 104-105 & n.8. SCV's concession is appropriate. The group has failed to identify any government conduct that comes anywhere close to the standard that applies to substantive due-process claims. *Hawkins v. Freeman*, 195 F.3d 732, 738 (4th Cir. 1999) (unconstitutional conduct is "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience" (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998))). The State has made the reasoned decision to stop issuing license plates displaying an image that many North Carolinians would find offensive and upsetting. Simply calling that decision "egregious" and "outrageous" does not make it so.

SCV has similarly failed to plead a procedural due-process claim. To make out such a claim, a plaintiff must plead facts that show both that (1) it had a liberty or property interest and (2) state action deprived it of that interest without constitutionally adequate process. *See Sansotta v. Town of Nags Head*, 724 F.3d 533, 540 (4th Cir. 2013);

Safety-Kleen, Inc. (Pinewood) v. Wyche, 274 F.3d 846, 859-60 (4th Cir. 2001). SCV has come up short on both fronts.

To start, SCV has not identified the requisite liberty or property interest. The only interest that SCV identifies that even arguably qualifies is its right to free speech. J.A. 36 (Compl. ¶¶ 33-34, 36-38). But, for the same reasons that SCV's First Amendment allegations fail, SCV has not adequately established that the State's refusal to issue the group a license plate implicates a cognizable liberty interest. *See supra* Part I.

Moreover, even assuming that SCV had identified a cognizable interest, its procedural due-process claim would still fail because it has not "plausibly allege[d] that North Carolina engaged in a constitutionally deficient process in deciding to cease printing license plates featuring the Confederate battle flag." J.A. 105. In fact, SCV's complaint itself makes clear that the State accorded SCV both notice and an opportunity to be heard, the quintessential hallmarks of adequate process. J.A. 105 (citing J.A. 35 (Compl. ¶ 29); *see also* J.A. 44

(Compl. Ex. C)[6]; *Snider Int'l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014). SCV has not explained how NCDOT's procedures were lacking, nor has it cited a single case that suggests that more process was due.

The district court's dismissal of SCV's due-process claim should therefore be affirmed.

B. The district court properly dismissed SCV's equal-protection claim.

The district court also properly held that SCV failed to state an equal-protection claim upon which relief could be granted. To plead an equal-protection claim, a plaintiff must allege facts to support (1) "that he has been treated differently from others with whom he is similarly situated" and (2) "that the unequal treatment was the result of intentional or purposeful discrimination." *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001); *see also Sylvia Dev. Corp. v. Calvert*

[6] This Court may properly consider exhibits attached to SCV's Complaint. *See* Fed. R. Civ. P. 10(c) (exhibits to a pleading are "a part of the pleading"); *Goines v. Valley Community Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016) (courts will "consider documents that are . . . attached to the complaints as exhibits" in deciding a motion to dismiss).

County, 48 F.3d 810, 819 (4th Cir. 1995). SCV's pleading does not support either of these requirements, let alone both.

First, SCV does not even attempt to show that it was treated differently from similarly situated parties. Indeed, once again, SCV's own complaint suggests the opposite: SCV acknowledges that the DMV would refuse to issue license plates bearing the Confederate battle flag *to any civic group*. J.A. 44 (Compl. Ex. C). This fact is fatal to the group's equal-protection claim. J.A. 108 (dismissing SCV's claim on that basis).

Second, SCV did not plead that the DMV acted with discriminatory intent in deciding to stop issuing specialty plates bearing the Confederate flag. *See Morrison*, 239 F.3d at 654 (explaining that "succeed[ing] on an equal protection claim" requires proving that any disparate treatment "was the result of intentional or purposeful discrimination"). Rather—as the district court found—SCV's complaint and accompanying exhibits seem to indicate the opposite. J.A. 108. The pleadings underscore that the State "remains open . . . to resuming the issuance of specialty license plates for members" of SCV, "so long as an alternative license plate design not containing the Confederate

battle flag is agreed upon." J.A. 108 (quoting J.A. 44 (Compl. Ex. C)). As the district court explained, this flexibility and openness strongly "suggests that [the State is] not motivated by an improper discriminatory intent against Plaintiff or its members." J.A. 108.

Because SCV failed to allege disparate treatment *or* discriminatory intent—much less both—its equal-protection claim cannot survive. Consequently, the district court's order should be affirmed.[7]

III. The District Court Properly Dismissed SCV's Statutory Claims.

SCV's complaint and briefing below also raised claims under North Carolina state law.[8] J.A. 37-40. Although SCV's state-law

---

[7] The district court further held that the State's decision not to issue specialty plates that might offend certain drivers "undoubtedly exceeds the low bar of rational basis review." J.A. 109. This conclusion provides yet another reason to affirm the dismissal of SCV's equal-protection claim.

[8] SCV's complaint also alleged state constitutional violations, J.A. 39 (Compl. ¶¶ 55, 57), but SCV declines ever to even mention the North Carolina Constitution on appeal. Any challenge to the dismissal of SCV's state constitutional claims is therefore forfeited. *See Hensley ex rel. North Carolina v. Price*, 876 F.3d 573, 580 & n.5 (4th Cir. 2017) (citing Fed. R. App. P. 28(a)(8)(A)).

Forfeiture was the right strategic decision on SCV's part. Its state constitutional claims fail for the same fundamental reasons as its federal due-process and equal-protection claims. J.A. 107 n.9, 110 n.10 (highlighting SCV's concession that its state and federal constitutional claims have the same elements); *see supra* Part II (explaining why SCV's federal claims were properly dismissed).

argument is not entirely clear, *see supra* Part I.B.3, the gist seems to be that state law does not grant the DMV any discretion over specialty plates. There are myriad problems with this argument, not least of which are that SCV lacks any cause of action to bring it and that this Court lacks the jurisdiction to respond to it, given the State's sovereign immunity. *See Pennhurst*, 465 U.S. at 124-25. For these and other reasons, the district court rightly dismissed SCV's state-law claims.

A. SCV lacks any cause of action enabling it to bring its statutory claims.

A plaintiff who wishes to pursue relief under North Carolina law must do more than simply identify a statute that seems relevant—it must also identify a private right of action that authorizes that plaintiff to seek relief. *See Sykes v. Health Network Sols., Inc.*, 828 S.E.2d 467, 474 (N.C. 2019); *Fearrington v. City of Greenville*, 871 S.E.2d 366, 375-76 (N.C. Ct. App. 2022). Creation of a private right of action can be explicit or implicit. *Sykes*, 828 S.E.at 474. "[T]ypically," however, courts will recognize a private cause of action "only where the legislature has *expressly* provided" for one "within the statute." *Id.* (quoting *Time Warner Ent. Advance/Newhouse P'ship v. Town of*

Landis, 747 S.E.2d 610, 615 (N.C. Ct. App. 2013)) (emphasis added); *see also Lea v. Grier*, 577 S.E.2d 411, 415 (N.C. Ct. App. 2003).

SCV has failed to identify a cause of action that allows it to bring its statutory claims. In the proceedings below, SCV itself conceded that "the General Assembly has not created an *explicit* cause of action related to specialty license plates."[9] Dkt. No. 17, at 2 (Response Brief in Opposition to Defendants' Motion to Dismiss) (emphasis added). Accordingly, if SCV does enjoy a private right of action, the right must necessarily have been granted *implicitly*. But SCV provides no basis for believing that any such implicit authorization has occurred.

Nor could SCV possibly establish an implicit right of action. Black-letter law makes clear that the State cannot be sued absent a clear, express waiver of sovereign immunity. *See, e.g.*, *Guthrie v. N.C. State Ports Auth.*, 299 S.E.2d 618, 625, 627 (N.C. 1983) (reiterating that the State may not be sued "without its express consent"). This clear-

[9] SCV's complaint does cite the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. § 1-253. But while that statute establishes a potential remedy, it does not create a freestanding cause of action. *See Sykes*, 828 S.E.2d at 475 (rejecting the plaintiffs' argument that the Declaratory Judgment Act gave them "a path to declaratory relief," notwithstanding the absence of a private cause of action elsewhere in the North Carolina General Statutes).

statement rule eliminates the prospect of an implicit right of action against the State: If the State cannot be sued without its express consent, then an implicit right of action against the State is paradoxical. *Cf. Guthrie*, 299 S.E.2d at 625, 627.

In short, because SCV lacks any cause of action—explicit or implicit—it cannot pursue a legal claim under the state statutes that establish the State's specialty-plate program.

B. Even if SCV had a cause of action, this Court would lack jurisdiction to grant the requested relief.

SCV's statutory claims fail for another, equally fundamental reason: this Court lacks jurisdiction to enter the relief that the group demands. *Pennhurst*, 465 U.S. at 124-25. At bottom, SCV's complaint asks this Court to force the DMV to comply with SCV's reading of North Carolina statutory law and resume issuing specialty plates bearing the Confederate flag. J.A. 40 (requesting a permanent injunction barring the State "from refusing to provide to qualifying members of Plaintiff SCV the commemorative license plates in questions"). That request plainly "contravenes the Eleventh Amendment." *Pennhurst*, 465 U.S. at 117, 124-25. Under well-settled law, sovereign immunity bars federal courts from "instruct[ing] state officials on how to conform their conduct

to state law." *Id.* at 106; *see also Bragg v. W. Va. Coal Ass'n*, 248 F.3d 275, 293 (4th Cir. 2001) (sovereign immunity precludes a federal "court's grant of any type of relief . . . based upon a State official's violation of State law"). Because the injunction that SCV demands would amount to precisely that kind of "intrusion on state sovereignty," this Court lacks jurisdiction to enter it. *Pennhurst*, 465 U.S. at 106.

C. State law does not strip the DMV of all discretion.

SCV's interpretation of state law also fails as a matter of common sense. The group's basic argument seems to be that North Carolina state law strips the DMV of any discretion when it comes to issuing specialty plates. Br. 9-10. In SCV's view, any time a "nationally recognized civic organization" submits a proposed plate design, the DMV is *required* to issue the plate, so long as (1) the plate is easily readable and (2) a segment of the plate is set aside for the "unique design representing the group or interest in question." Br. 8-9 (quoting N.C. Gen. Stat. §§ 20-79.4(a3), 20-79.4(b)(44)).

This understanding of North Carolina law is incorrect. The DMV cannot be compelled to issue license plates displaying all manner of hateful, offensive, or obscene images—a swastika, a Ku Klux Klan hood,

pornography—simply because those images were proposed by a civic club willing to be affiliated with them. To list the possibilities is to disprove the theory.

SCV's theory is also generally inconsistent with the basic principles of the government-speech doctrine. The theoretical foundation of that doctrine is that "government would not work" if government officials "'lacked th[e] freedom' to select the messages [they] wish[ ] to convey." *Walker*, 576 U.S. at 207-08 (quoting *Summum*, 555 U.S. at 468) (first alteration in original). The proper avenue for responding when government officials refuse to endorse one's preferred message is the ballot box—not a lawsuit seeking to compel government speech. *See id.* at 207 ("[I]t is the democratic electoral process that first and foremost provides a check on government speech.").[10]

[10] The district court found that its resolution of SCV's First Amendment claim mooted SCV's declaratory judgment claim. J.A. 103 n.6. This conclusion presumably arose from the fact that reading North Carolina state law to constrain state speech would be inconsistent with the government-speech doctrine. The district court's analysis of SCV's free-speech claim thus inherently resolved the group's state-law claim.

D. *Faulkner* cannot support SCV's statutory claims.

SCV's primary answer to the many problems with its state-law argument is the North Carolina Court of Appeals' decision in *North Carolina Division of Sons of Confederate Veterans v. Faulkner*, 509 S.E.2d 207 (N.C. Ct. App. 1998). But that case is hardly the panacea that SCV seems to believe. *Faulkner*—a case that predates *Walker* by nearly two decades—stands for the simple proposition that SCV qualifies as a "civic club" under North Carolina law. *Id.* at 211. NCDOT accepts that holding. Nevertheless, while SCV may be a civic club entitled to apply for a specialty plate, there is an important difference between the right to apply for a specialty plate and automatic entitlement to a particular plate design. *Faulkner* supports the former, but it says nothing at all to suggest that SCV enjoys the latter. Consistent with *Faulkner*, the State remains ready and willing to work with SCV to identify a plate design that represents their organization. It will not, however, agree to use state property to propagate a hateful image likely to offend and anger drivers throughout the State.[11]

[11] As SCV points out, *Faulkner* does contain a footnote that raises the possibility that "allowing some [civic clubs] to obtain personalized plates while disallowing others . . . could implicate the First Amendment's restriction against

CONCLUSION

NCDOT respectfully requests that this Court affirm the district court's dismissal of SCV's claims.

Respectfully submitted,

JOSHUA H. STEIN
Attorney General

/s/ Sarah G. Boyce
Sarah G. Boyce
Deputy Solicitor General

Kathryne E. Hathcock
Special Deputy Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
(919) 716-6400

August 10, 2022

content-based restraints on free speech." Br. 12-13 (quoting *Faulkner*, 509 S.E.2d at 777 n.1). This footnote should not trouble the Court. Again, *Faulkner* was decided in 1998, seventeen years before the Supreme Court held that specialty plates are not protected by the First Amendment, and eighteen years before this Court applied that holding in North Carolina. *Walker*, 576 U.S. at 219-20; *Tennyson*, 815 F.3d at 185. Moreover, as the State has made clear, it does not dispute that SCV is allowed to "obtain [a] personalized plate[ ]" like other civic clubs. *Faulkner*, 509 S.E.2d at 777 n.1. It simply insists that SCV—like other civic clubs—propose a design that is not polarizing and offensive.

CERTIFICATE OF SERVICE

I certify that on this the 10th of August, 2022, I filed the foregoing brief with the Clerk of Court using the CM/ECF system, which will automatically serve electronic copies on all counsel of record.

/s/ Sarah G. Boyce
Sarah G. Boyce

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 6,737 words, excluding the parts of the petition exempted by Fed. R. App. P. 32(f). This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a proportionally spaced typeface: 14-point Century Schoolbook font.

/s/ Sarah G. Boyce
Sarah G. Boyce

ADDENDUM

Addendum page

North Carolina General Statutes

Chapter 1.

Civil Procedure.

Article 26.

Declaratory Judgments.

§ 1-253. Courts of record permitted to enter declaratory judgments of rights, status and other legal relations.

Courts of record permitted to enter declaratory judgments of rights, status and other legal relations. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

North Carolina General Statutes

Chapter 20.

Motor Vehicles.

Article 3.

Motor Vehicles Act of 1937.

Part 3.

Registration and Certificate of Titles of Motor Vehicles.

§ 20-63. Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates, First in Freedom plates, or National/State Mottos plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

(a) The Division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semitrailer and for every other motor vehicle. Registration plates issued by the Division under this Article shall be and remain the property of the State, and it shall be lawful for the Commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same. Whenever the Commissioner finds that any registration plate issued for any vehicle pursuant to the provisions of this Article has become

illegible or is in such a condition that the numbers thereon may not be readily distinguished, he may require that such registration plate, and its companion when there are two registration plates, be surrendered to the Division. When said registration plate or plates are so surrendered to the Division, a new registration plate or plates shall be issued in lieu thereof without charge. The owner of any vehicle who receives notice to surrender illegible plate or plates on which the numbers are not readily distinguishable and who willfully refuses to surrender said plates to the Division shall be guilty of a Class 2 misdemeanor.

(b) Every license plate must display the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted," unless the plate is a special registration plate authorized in G.S. 20-79.4.

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less shall be, at the option of the owner, either (i) a "First in Flight" plate, (ii) a "First in Freedom" plate, or (iii) a "National/State Mottos" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the "First in Flight" plate shall depict the

Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right. A "First in Freedom" plate shall have the words "First in Freedom" printed at the top of the plate above all other letters and numerals. The background of the "First in Freedom" plate may include an image chosen by the Division that is representative of the Mecklenburg Declaration of 1775 or the Halifax Resolves of 1776. A "National/State Mottos" plate shall have in words the motto of the United States "In God We Trust" printed at the top of the plate above all other letters and numerals and have in words the State motto "To Be Rather Than To Seem". The background of the "National/State Mottos" plate shall include an image chosen by the Division that is representative of the American Flag.

(b1) The following special registration plates do not have to be a "First in Flight" plate, "First in Freedom" plate, or "National/State Mottos" plate as provided in subsection (b) of this section. The design of the plates that are not "First in Flight" plates, "First in Freedom" plates, or "National/State Mottos" plate must be developed in accordance with G.S. 20-79.4(a3). For special plates authorized in G.S. 20-79.7 on or after July 1, 2013, the Division may not issue the plate on a background under this subsection unless it receives the required number of applications set forth in G.S. 20-79.3A(a).

. . . .

(c) Such registration plate and the required numerals thereon, except the year number for which issued, shall be of

sufficient size to be plainly readable from a distance of 100 feet during daylight.

. . . .

North Carolina General Statutes

Chapter 20.

Motor Vehicles.

Article 3.

Motor Vehicles Act of 1937.

Part 5.

Issuance of Special Plates.

§ 20-79.3A. Requirements to establish a special registration plate.

(a) Minimum Number of Paid Applications. – An applicant under this section is a person, organization, or other legal entity seeking authorization to establish a special registration plate for a motor vehicle or a motorcycle. An applicant must obtain the minimum number of paid applications from potential purchasers before submitting a Special Registration Plate Development Application to the Division. A "paid application" means an application completed by a potential purchaser and submitted to the applicant requesting purchase of the special registration plate being proposed by the applicant plus payment of the proposed additional fee amount. The minimum number of paid applications is as follows:

(1) 300 for a special registration plate on a standard background described in G.S. 20-63(b).

(2) 500 for a special registration plate on a background authorized under G.S. 20-63(b1).

(b) Application. – An applicant must submit all of the items listed in this subsection to the Division by February 15 in order for a bill authorizing the special registration plate to be considered for approval during the legislative session being held that year. The Division shall consider an application received after February 15 for approval in the legislative session that begins in the year following the submission date. The application items must include:

(1) A completed Special Registration Plate Development Application.

(2) A fee equal to number of paid applications received by the applicant, which shall be no less than the minimum number of paid applications required under subsection (a) of this section, multiplied by the proposed additional fee amount stated on the Special Registration Plate Development Application submitted by the applicant.

(c) Report to General Assembly. – On or before March 15 of each year, the Division shall submit to the Chairs of the House and Senate Transportation Committees, the Chairs of the House and Senate Finance Committees, and the Legislative Analysis Division of the General Assembly a report that identifies each applicant that has applied for a special registration plate to be authorized in the legislative session being held that year and indicates whether the applicant met the requirements of this section. If an applicant meets the requirements of this section, then a bill may be considered during the legislative session being held

that year to authorize a special registration plate for the applicant that submitted the application.

(d) Legislative Approval. – If a special registration plate requested under this section is approved by law, the applicant must submit all of the following items to the Division no later than 60 days after the act approving the plate becomes law. If the applicant fails to timely submit the items required under this subsection, the authorization for the special registration plate shall expire in accordance with G.S. 20-79.8(a1). The items to be submitted are:

(1) The final artwork for the plate. The Division must review the artwork to ensure it complies with the standardized format established by G.S. 20-79.4(a3).

(2) A list of purchasers who submitted to the applicant a paid application for the special registration plate and any additional fees submitted by potential purchasers to the applicant after submission of the Special Registration Plate Development Application.

(e) Legislative Disapproval. – If the special registration plate is not authorized in the legislative session in which the authorization was sought, the Division shall refund to the applicant the fee submitted under subdivision (2) of subsection (b) of this section.

(f) Issuance. – Within 180 days after receipt of the requester's design and the minimum number of paid applications, the Division shall issue the special registration plate.

North Carolina General Statutes

Chapter 20.

Motor Vehicles.

Article 3.

Motor Vehicles Act of 1937.

Part 5.

Issuance of Special Plates.

§ 20-79.4. Special registration plates.

(a) General. – Upon application and payment of the required registration fees, a person may obtain from the Division a special registration plate for a motor vehicle registered in that person's name if the person qualifies for the registration plate. A holder of a special registration plate who becomes ineligible for the plate, for whatever reason, must return the special plate within 30 days. A special registration plate may not be issued for a vehicle registered under the International Registration Plan. A special registration plate may be issued for a commercial vehicle that is not registered under the International Registration Plan. A special registration plate may not be developed using a name or logo for which a trademark has been issued unless the holder of the trademark licenses, without charge, the State to use the name or logo on the special registration plate.

(a1) Qualifying for a Special Plate. – In order to qualify for a special plate, an applicant shall meet all of the qualifications set out in this section. The Division of Motor Vehicles shall

verify the qualifications of an individual to whom any special plate is issued to ensure only qualified applicants receive the requested special plates.

(a2) Special Plates Based Upon Military Service. – The Department of Military and Veterans Affairs shall be responsible for verifying and maintaining all verification documentation for all special plates that are based upon military service. The Department shall not issue a special plate that is based on military service unless the application is accompanied by a motor vehicle registration (MVR) verification form signed by the Secretary of Military and Veterans Affairs, or the Secretary's designee, showing that the Department of Military and Veterans Affairs has verified the applicant's credentials and qualifications to hold the special plate applied for. The following shall apply to special plates issued under this subsection:

(1) Unless a qualifying condition exists requiring annual verification, no additional verification shall be required to renew a special registration plate either in person or through an online service.

(2) If the Department of Military and Veterans Affairs determines a special registration plate has been issued due to an error on the part of the Division of Motor Vehicles, the plate shall be recalled and canceled.

(3) If the Department of Military and Veterans Affairs determines a special registration plate has been issued to an applicant who falsified documents or has fraudulently applied for the special registration plate, the Division of Motor Vehicles shall revoke the special plate and take appropriate enforcement action.

(4) The surviving spouse of a person who had a special

plate issued under the terms of this subsection may continue to renew the plate so long as the surviving spouse does not remarry. This is a qualifying condition requiring verification under subdivision (1) of this subsection.

(a3) The Division shall develop, in consultation with the State Highway Patrol and the Division of Adult Correction and Juvenile Justice, a standardized format for special license plates. The format shall allow for the name of the State and the license plate number to be reflective and to contrast with the background so it may be easily read by the human eye and by cameras installed along roadways as part of tolling and speed enforcement. A designated segment of the plate shall be set aside for unique design representing various groups and interests. Nothing in this subsection shall be construed to require the recall of existing special license plates.

(b) Types. – The Division shall issue the following types of special registration plates:

. . . .

(44) Civic Club. – Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. A person may obtain from the Division a special registration plate under this subdivision for the registered owner of a motor vehicle or a motorcycle. The registration fees and the restrictions on the

issuance of a specialized registration plate for a motorcycle are the same as for any motor vehicle. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

. . . .