enacted a new policy, making the case moot. This position failed to assuage the court's concerns given that City police could enforce Mo. Rev. Stat. § 307.100, which was nearly identical to the local ordinance. In addition, the court pointed out that the City had argued at one point that flashing lights at other drivers may be "illegal interference with a police investigation," which state law provides is a crime. As a result, the City's assurances that it would no longer pull drivers over did not "eliminate the reasonable chilling effect" on speech.

Having found that Ellis' would likely succeed on the merits, the court issued an injunction against the City police taking further action against drivers who blink their headlights to alert of speed traps.

http://online.wsj.com/public/resources/documents/michaelelli.pdf (last accessed Feb. 20, 2014)

Speech: North Carolina License Plate Program Allowing "Pro-Life" Plates but Disallowing "Pro-Choice" Plates is Not Protected Governmental Speech

American Civil Liberties Union v. Tata, No. 13-1030 (4th Cir. Feb. 11, 2014).

In June 2011, the North Carolina General Assembly passed, and the North Carolina Governor signed into law, House Bill 289 which authorized the North Carolina Division of Motor Vehicles to issue, among other specialty license plates, a "Choose Life" plate. The law authorized no pro-choice specialty license plate. In fact, plates bearing slogans such as "Respect Choice" were suggested but repeatedly rejected by the North Carolina General Assembly.

Because North Carolina refused to allow a specialized plate to promote their cause, various North Carolina vehicle owners and the ACLU brought suit in the United States District Court for the Eastern District of North Carolina, claiming First and Fourteenth Amendment violations.

In December 2011, the district court granted a preliminary injunction blocking North Carolina from issuing the "Choose Life" plate. One year later, that court granted summary judgment and permanently enjoined the "Choose Life" plate. The district court held that "sufficient private speech interests are implicated by the specialty license plates to preclude a finding of purely government speech[,]" and that "the State's offering of a Choose Life license plate in the absence of a pro-choice plate constitutes viewpoint discrimination in violation of the First Amendment." North Carolina appealed.

HELD: The Fourth Circuit affirmed, finding that North Carolina's license plate program did not constitute government speech.

DISCUSSION: It is clear that the First Amendment prohibits the government from regulating or discriminating against virtually all *private* points of view. But under the "government speech" doctrine, when the government speaks for itself, it can say what it wishes. Here, North Carolina did not deny that it engaged in viewpoint discrimination by approving the "Choose Life" plate while refusing to allow a pro-choice plate. But it contended that the license plate speech at issue was solely its own.

To determine whether speech is that of the government, private parties, or both, the Fourth Circuit evaluates:

1. "the central purpose of the program in which the speech in question occurs;"
2. "the degree of editorial control exercised by the government or private entities over the content of the speech;"
3. "the identity of the literal speaker;" and
4. "whether the government or the private entity bears the ultimate responsibility for the content of the speech[.]"*Sons of Confederate Veterans, Inc. ex rel. Griffin v. Commissioner of the Virginia Department of Motor Vehicles*, 288 F.3d 610 (4th Cir. 2002).

Applying these tests, the court found:

- the purpose of the speech was primarily to allow *private* vehicle owners to express their views, because the license plate program produced plates in response to ideas from private parties. More than 200 different symbols and messages had been allowed, including the Confederate flag, the Knights of Columbus symbol and logo's of various colleges and universities;
- editorial control rested with the *government*;
- the "literal speaker" was the *private* vehicle owner; although the plates themselves were government property, messages on those plates such as depictions of a dog and cat and the statement "I care" would not be identified with the government; and
- the party responsible for the content of the speech was the *private* vehicle owner, who made the decision to purchase and display a particular message.

In sum, the North Carolina license plate program involved private expression. The state's refusal to allow pro-choice plates could not be justified as "government speech." It was clearly distinguishable from the *Summum* fact pattern, a case in which the government had selected various permanent monuments to be placed in a city park. There, the viewer would likely understand that the government exercised control over the park and had selected the permanent messages enshrined therein.

The Fourth Circuit result aligned with the Second, Seventh and Eleventh Circuits. Only the Sixth Circuit, which upheld Tennessee's exclusion of pro-choice license plates while allowing pro-life plates, has diverged from the majority.

http://www.ca4.uscourts.gov/Opinions/Published/131030.P.pdf (last accessed Feb. 20, 2014)

Speech: Seventh Circuit Enjoins Commission's Permit Policy for War Memorial as Likely not Narrowly Tailored or Content Neutral

Eric Smith v. Executive Director of the Indiana War Memorials Commission, No. 13-1939 (7th Cir. Feb. 4, 2014).

In another case dealing with the often-intertwined issues of free assembly and free speech, the Seventh Circuit has struck down a policy requiring that protestors at a public monument in Indianapolis obtain a permit, finding that the standards for permit issuance were overly restrictive and not sufficiently tailored to advance a governmental interest.

Downtown Indianapolis includes the Soldiers and Sailors Monument, a place relatively common for groups and protestors to gather. It is a quintessential traditional public forum. In the summer of 2012 Eric Smith worried that the United States government would sign the Arms Trade Treaty, a treaty that requires its signatories to monitor international sales of conventional weapons, thus ensuring arms embargoes are enforced and weapons do not fall into the hands of terrorists. Mr. Smith believed the treaty violated the Constitution by infringing on the right to bear arms and sought to organize a protest at the Indianapolis monument.

He put up fliers urging others to be fearful of the "atrocious act" of signing the treaty, which he equated with "taking away the 2nd Amendment," and told readers to "stop being lambs." He asked readers to come to the protest at the monument in July of 2012. The advertisement did not attract a single protestor to the monument on the assigned day. Instead it was only Eric Smith and his son. Undeterred, they brought out their homemade signs, and sought to begin the protest. (As a side note, the U.S. ultimately signed the treaty, but has yet to ratify it.)

Soon after Smith's arrival an Indiana War Memorials Commission (Commission) employee asked if Smith had a permit for his protest and, finding he didn't, told Smith to leave. Smith answered that it was his First Amendment right to protest at the monument, but when state police officers threatened to arrest him, Smith relented.
Smith then sued. He claimed the Commission's permit policy violated the Free Speech Clause of the First Amendment. He moved for a preliminary injunction, arguing the policy was not narrowly tailored, that it allowed too much discretion for decision makers, and that the permit requirement was overbroad. The Commission defended on the ground that the permit policy was necessary to maintain order at the monument. At trial a Commission employee explained that only those that wanted to use the property for a "specific purpose" had to get a permit, and others did not. The district court ruled against Smith, leaving the policy in place. Smith appealed.