

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3
4 **SUMMARY ORDER**

5
6 **RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A**
7 **SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED**
8 **BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1.**
9 **WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY**
10 **MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE**
11 **NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY**
12 **OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

13
14
15 At a stated Term of the United States Court of Appeals for the Second Circuit, held at the
16 Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York on the
17 5th day of August, two thousand fifteen.

18
19 Present: ROSEMARY S. POOLER,
20 PETER W. HALL,
21 DEBRA ANN LIVINGSTON,
22 *Circuit Judges.*

23
24
25 CHILDREN FIRST FOUNDATION, INC.,

26
27 *Plaintiff-Appellee,*

28
29 v.

11-5199-cv

30
31 BARBARA J. FIALA, in her official capacity as Commissioner
32 of the New York State Department of Motor Vehicles,

33
34 *Defendant-Appellant.*

35
36
37 Appearing for Appellant: Zainab A. Chaudry, Assistant Solicitor General (Barbara D.
38 Underwood, Solicitor General, Andrea Oser, Assistant Solicitor
39 General, *on the brief*) for Eric T. Schneiderman, Attorney General
40 of the State of New York, Albany, NY.

41
42
43 Appearing for Appellee: Jeremy D. Tedesco (Jeffrey A. Shafer, David A. Cortman, James
44 P. Trainor, Kevin Theriot, *on the brief*), Alliance Defense Fund,
45 Scottsdale, AZ.

1 Appeal from the United States District Court for the Northern District of New York (McCurn,
2 J.).

3
4 **ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED,**
5 **AND DECREED** that the judgment of said District Court be and it hereby is **VACATED** and
6 **REMANDED**.

7
8 Children First Foundation Inc. (“CFF”) filed a petition for rehearing from our opinion in
9 *Children First Found., Inc. v. Fiala*, —F.3d—, 2015 WL 2444501 (2d Cir. May 22, 2015). We
10 stayed our mandate pending the Supreme Court’s issuance of its opinion in *Walker v. Texas Div.,*
11 *Sons of Confederate Veterans, Inc.*, —U.S.—, 135 S. Ct. 2239 (2015). Both parties submitted
12 briefing on the impact of *Walker*.

13
14 Having considered *Walker* and the subsequent briefing, we now GRANT the petition for
15 rehearing, and withdraw that portion of the opinion filed May 22, 2015 holding the custom
16 license plate program (1) was facially valid and (2) did not violate CFF’s First Amendment
17 rights in rejecting CFF’s proposed custom plate design.

18
19 We further VACATE the judgment of the district court and REMAND for further
20 proceedings consistent with the opinion of the Supreme Court. So that the case may be heard as
21 expeditiously as possible, we direct that should the district court deem further discovery
22 necessary, said discovery be limited to the issues raised by *Walker*.

23
24 From whatever final decision the district court makes, the jurisdiction of this Court to
25 consider a subsequent appeal may be invoked by any party by notification to the Clerk of this
26 Court within ten days of the district court’s decision, in which event the renewed appeal will be
27 assigned to this panel. *See United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994). Each side to
28 bear its own costs.

29
30
31 FOR THE COURT:
32 Catherine O’Hagan Wolfe, Clerk
33