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US supreme court wrestles with Texas Confederate flag license plate

- Sons of Confederate Veterans want right to use specialty vehicle plate
- Court debates whether plate is 'private speech' or 'government speech'

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The US supreme court appeared conflicted on Monday while hearing arguments as to whether Texas infringed on its residents first amendment rights by rejecting specialty license plates decorated with a Confederate flag.

According to reports from the courtroom, the justices appeared uneasy about a possible ruling in favor of a group called the Sons of Confederate Veterans, which brought the first amendment charge, that would require Texas to approve all plates. The justices raised the prospect of plates promoting widely offensive messages such as support for al-Qaida.

After the Texas department of motor vehicles board rejected a proposal by the Sons of Confederate Veterans to allow drivers choose a license plate featuring a Confederate flag in 2011, the group sued the state for interfering with their first amendment right to free speech. The flag, which to many is associated with slavery, is meant to celebrate their southern heritage, the group says.

Texas insists that the license plates are the state's speech, not that of its residents. As such, it reserves the right to exclude symbols such as swastikas and Confederate battle flags from state-issued license plates.

At one point during the one-hour argument, Justice Ruth Bader Ginsburg recited a list of potentially offensive messages.

James George, the lawyer representing the group Sons of Confederate Veterans, which proposed the flag plate, said Texas would have to approve all of them if his side won.

"So they could have the swastika. And suppose somebody else says I want to have 'Jihad' on my license plate. That's OK, too?" Ginsburg said, according to Reuters.

Chief Justice John Roberts said the state could simply halt the program if it does not want to approve messages it disagrees with.

“If you don’t want to have the al-Qaida license plate, don’t get into the business of allowing people to buy ... the space to put on whatever they want to say,” Roberts said, according to Reuters.

The justices also raised questions about whether the state had a sound legal reason under the first amendment, which guarantees free speech, for how it approved some plates but not others.

Similar design with a Confederate flag appears on license plates in Alabama, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

Texas already has hundreds of specialty plates. In addition to those designed for college alumni, sports fans and other organizations, there are some that send a particular message like “Choose Life”, “God Bless Texas” and “Fight Terrorism”.

“States that issue ‘Fight Terrorism’ specialty plates are not required to offer specialty plates with messages that praise terrorist organizations,” the state said in its brief.

The Confederate flag license plate is not the only contentious one. At the same time that Texas officials took this case to the supreme court, North Carolina also appealed with a similar case. According to Scotusblog, the North Carolina officials are trying to challenge a ruling that found that state law decision to allow plates with “Choose Life” message but not allow “Respect Choice” plates was interfering with private speech.

“On December 5, the court chose to review the Texas case, leaving the separate North Carolina case to be resolved based on what happens on the Texas program,” Lyle Denniston wrote on Scotusblog.

The supporters of the Confederate flag license plate have found an ally in the American Civil Liberties Union.

The Confederate battle flag was a banner for those who supported slavery and was later a rallying sign of those who supported racial separation, but that doesn’t justify censorship, said ACLU.

“However reasonable this distaste for a symbol of racism, the Constitution does not permit the state to discriminate against messages in a forum created for private speech,” the organization wrote in its brief in support of the Sons of Confederate Veterans.

“It would be offensive to the first amendment to allow Texas to tell us what is offensive,” said another brief filed by Cato institute.

The Texas case also comes with its own set of interesting characters.

There is Ben Jones, the spokesman for the Sons of Confederate Veterans. Jones served two terms as democratic congressman from Georgia, but is probably best known for his role as the mechanic Cooter Davenport in the TV series *The Dukes of Hazzard*.

“It’s a heritage organization,” Jones defended Sons of Confederate Veterans to the New York Times. “It’s not a bunch of racists. It’s a group that longs for reconciliation and progress, but will not forget the past.”

In its corner, the organizations also has R James George JR, the first amendment supporter and lawyer who is arguing its case. George started off his legal career as a law clerk for Thurgood Marshall, the US supreme court’s first African American justice, according to NPR. While he himself won’t be found driving around in a car with Confederate flag license plate, George believes that being able to do so is protected by the first amendment.

In the past, George defended Tupac Shakur, when a Texas widow sued him alleging that his 2Pacalypse Now album was responsible for a shooting that killed her husband.

A ruling in Walker v Sons of Confederate Veterans case is expected by the end of June.

Reuters contributed to this report