



Free Speech on License Plates? High Court to Decide

By Richard Wolf

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WASHINGTON -- Drive across the vast expanse of Texas and you're liable to see license plates celebrating everything from Dr. Pepper and Mighty Fine Burgers to Horned Lizards and Wild Turkeys.

Nothing is more popular in one of the nation's most conservative states, however, than the U.S. military and its veterans. No fewer than 92 of its 385 specialty plates honor their service.

But when it came to adding a 93rd such license plate -- one commemorating Confederate soldiers -- Texas balked. Its refusal, following objections raised by residents who equate the Confederate flag with slavery and oppression, will be taken up Monday by the Supreme Court.

The case combines one of the most basic legal concepts -- freedom of speech -- with conundrums such as: Who is speaking, the government or the driver? Can subject matter be limited, or specific viewpoints? Must states give equal time to both sides of an issue -- say, both "Save the Sea Turtles" and "Kill the Sea Turtles?"

Moreover, if license plates have limits, how about memorial bricks and tiles on municipal or school property? Advertisements on city buses? Government web sites?

This is how a simple case about license plates becomes a crucial test of the First Amendment, pitting freedom of speech against government authority.

"You may disagree with our opinion, but we are honoring those people who in their time sacrificed all," says Ben Jones, a former Democratic congressman and chief of heritage operations for the Sons of Confederate Veterans, which boasts about 30,000 members. "We're not ashamed of our ancestors."

"Government speech is on the line," says Lisa Soronen, executive director of the State Local Legal Center, which advocates for state and local governments at the Supreme Court. "This is crucial stuff for us."

Every state in the nation offers specialty license plates. Maryland alone offers nearly 800, including one for the Sons of Confederate Veterans. It's somewhat surprising, therefore, that the issue of license plate censorship is just arriving at the Supreme Court.

The plates cost extra to purchase, with the proceeds usually split between the states and the sponsoring organizations. Sons of Confederate Veterans plates first became available in Mississippi in 2003, with the money helping to restore Civil War-era flags. Today they are offered in eight other states: Alabama, Georgia, Maryland, Louisiana, North Carolina, South Carolina, Tennessee and Virginia.

The contested Texas plate -- the first one ever turned down by the Department of Motor Vehicles Board -- features a Confederate battle flag framed by the words "Sons of Confederate Veterans 1896." A faint Confederate flag also appears in the background. Proceeds from sales would go toward preservation and education efforts, including the group's youth camp, where teenagers can learn how to fire muskets and cannon.

'EVERYTHING OFFENDS SOMEONE'

As the American Civil Liberties Union acknowledges, "the Confederate battle flag was the banner for those who supported slavery and sought to break our nation apart. It later served as a rallying sign for those seeking to maintain racial separation in all facets of life, from the voting booth to the wedding chapel."

Yet the ACLU defends the group in a friend-of-the-court brief. So does the conservative Becket Fund for Religious Liberty and the libertarian Cato Institute, which notes that Texas recognizes April as Confederate History Month and Jan. 19 as Confederate Heroes Day.

"Everything offends someone," says the Cato brief, which received an assist from satirist P.J. O'Rourke. "Freedom produces barbs, points, and rough edges, and any attempt to sand those down will not only result in less freedom, it will create a less interesting, dynamic, and robust society."

Marshall Davis, public information officer for the Texas Division, Sons of Confederate Veterans, denies any racist intentions.

"When I put this plate on my car, it will be to honor my soldier-ancestors," Davis says. ""We deplore racist groups. We deplore the fact that our flag was misused, that the Klan waved that flag."

The most controversial license plate on the market -- and the one involved in the most court cases -- bears the simple message "Choose Life." It's available in 29 states, but in North Carolina, two federal courts have ruled the state cannot offer it without also allowing plates preferred by abortion-rights advocates. That case is pending at the Supreme Court.

In Indiana, a license plate designed by the Indiana Youth Group to support lesbian, gay, bisexual and transgender youths proved so controversial that the Legislature created an oversight committee to review specialty plates.

STATES: GET A BUMPER STICKER

Texas, backed by 11 other states, contends the messages on license plates should be considered government rather than private speech, and therefore not subject to First Amendment challenges. The states reason that drivers can use bumper stickers, window decals or paint jobs to display private messages.

The state also argues that it is not discriminating against a point of view, since it has not approved a license plate with the opposite message -- in this case, disparaging Confederate veterans. And it notes that states often approve one message without its alternative -- "fight terrorism," for instance, or in the District of Columbia, "taxation without representation."

Proponents of free speech say the driver, not the state, does the speaking by displaying the license plates. If governments are allowed to limit such speech, they say, it will lead to increased censorship on college campuses and against religious minorities.

Their side is supported by four federal appeals courts, while just one has ruled that license plates are a form of government, rather than private, speech.

While the Supreme Court has been a vigorous defender of free speech rights -- going so far as to sanction military funeral protests and so-called animal "crush" videos -- it also has ruled that governments can set guidelines for their own property or advertisements.

For that reason, it's not impossible that the court will rule against the Confederate flag.

"It's an easy target. Hollywood's always portrayed the South as mean-spirited and backwards," bemoans Jones, a Virginian who played Cooter on the popular 1970s TV show *Dukes of Hazzard* and later served two terms in Congress from Georgia.

But as for the license plates, Jones says Texas should let bygones be bygones. After all, he says, "we can't do anything about the fact that Grandpa fought for the South."