

First Amendment doesn't just protect pleasant, socially acceptable, politically correct speech

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Alongside other challenges involving the hallowed First Amendment, the case heard this week by the U.S. Supreme Court over whether the state of Texas can legally refuse to place the Confederate battle flag on specialty license plates must seem trivial. Yet it raises significant, even disturbing questions about whether the state should be permitted to pick and choose its causes and customers.

We don't think so. If the state of Texas opens itself up for business to put on license plates historical motifs, college logos, even some heady political themes, it's duty bound to serve all equally. That means pro-life plates as well as pro-choice plates. That means pro-Christian plates as well as pro-Muslim plates. That means Republican plates as well as Democratic plates.

And if it can't do that, it should close up shop.

The case heard by the high court — pressed by the Texas chapter of the Sons of Confederate Veterans after the Texas Department of Motor Vehicles in 2011 rejected its application to produce a specialty plate with the provocative Stars and Bars — has drawn a surreal array of allies: the American Civil Liberties Union, Becket Fund for Religious Liberty, Cato Institute and Choose Life Wisconsin. That reflects this issue's complexity.

Tattered symbol

The impropriety of a Confederate license plate seems glaring. Some see such a plate as honoring a bygone heritage, a way of Southern life. Many have ancestors who served the Confederacy. Yet the Confederate battle flag also flew over the suppression, enslavement and cruel and violent abuse of a sector of Americans because of their skin color. It set brother against brother.

In our book, that's not worth celebrating. And its employment since the Civil War has been no better. The battle flag has been used to champion white supremacy, racial discrimination and ideas contrary to the Constitution and Declaration of Independence. (And for those invoking that old canard about the 1860-61 secession being undertaken for "states' rights," we direct you to the documents of secession, beginning with Texas'.)

That all acknowledged, even racist symbols — repugnant to those who know our history and founding documents — nonetheless constitute a viable form of speech when free of hateful context. They're protected by the First Amendment. That's the frustrating thing about this amendment: It protects us and those with whom we vehemently disagree.

Complicated issue

And that's why the Supreme Court should be struggling with this issue (and clearly is). That's why you have groups like the left-wing American Civil Liberties Union and the libertarian Cato Institute, co-founded by Charles Koch, joining the SCV in its case against the state of Texas (which at least claims the moral high ground for resisting a virulent symbol of discrimination and division).

Justice Anthony Kennedy made a good point when he noted the huge number of speciality plates that Texas already offers — more than 430 touting various causes and groups: World Wildlife Fund, Fight Terrorism, Save the Ocelots, Dr Pepper, Don't Tread on Me (favored by tea party types), Rather Be Golfing, Choose Life, Marine Mammal Recovery, Citrus Industry, God Bless Texas and Come and Take It, to name a few.

His point: The state shouldn't be allowed to discriminate regarding so many themes and messages on state license plates any more than it can select who can and cannot speak in a public park. And Chief Justice John Roberts got to the heart of the matter when he noted Texas is only pursuing this specialty plate business for the money — \$17.6 million last year — and not to shape any opinions.

It's terrific the state is raising all that. But if it's to pursue advertising based on public input, it needs to serve all in the public equally, however politically untenable, or else shut down the store. No decision is expected till June, but the justices seem to have a solid grasp of all the painful complexities involved.