

Court will decide if it's OK to ban Confederate license plates

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By Michael Doyle

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WASHINGTON — Texans can select their license plates to declare themselves as “Animal Friendly.” Their plates can urge passers-by to “Be a Blood Donor” or to “Choose Life.”

The state plates, though, cannot show a Confederate flag, as sought by the Texas Division of the Sons of Confederate Veterans. Consequently, the Supreme Court on Monday will confront the question of whether Texas is illegitimately discriminating against certain speech.

The court's eventual answer will focus, in turn, on the more basic and surprisingly complicated question of whether it's the driver or the government that speaks with a license plate.

“There have been conflicts over what the rules should be for a long time,” Sons of Confederate Veterans attorney R. James George Jr., said Friday, adding that the case “is about when the state can say no, and why.”

The court's answer in the case, *Walker v. Texas Division, Sons of Confederate Liberty*, will drive consequences far beyond Texas, as most other states also offer message-bearing specialty license plates.

Rules vary, while selections range from California plates that use a whale's tail to promote the Coastal Commission, to Florida plates that invoke “In God We Trust,” and Kentucky plates that declare “Coal Keeps the Lights On!”

Illustrating the broader stakes, Washington and Missouri joined nine other states in a brief urging the court to side with Texas' effort to regulate specialty license-plate messages.

“Just as with park monuments, the states have authorized plates expressing certain viewpoints, and not others, on many topics,” the other states' brief, led by Ohio State Solicitor Eric Murphy, said, adding that “the court should be wary of treating specialty plates as a forum for private speech.”

A related case, involving a challenge to North Carolina's "Choose Life" license plate, is pending before the Supreme Court.

"It boils down to government censorship," Ilya Shapiro, a senior fellow at the libertarian Cato Institute, said Friday. "Do we really want government officials — at the DMV, no less — determining what speech is 'too offensive' to allow in public?"

The Texas specialty-license-plate program includes more than 350 permitted messages, including about 232 chosen by the Texas Legislature and 174 or so approved by the Texas Department of Transportation.

In 2009, the Sons of Confederate Veterans initiated efforts to secure a commemorative license plate. The proposed plate depicted a Confederate battle flag framed by the words "Sons of Confederate Veterans 1896." A faint Confederate flag also appeared in the background.

A complicated process ensued, eventually leading to the Texas Department of Motor Vehicles Board unanimously voting in 2011 to reject the proposed license plate.

"A significant portion of the public associate the Confederate flag with organizations advocating expressions of hate directed toward people or groups that is demeaning to those people or groups," the board explained.

The Sons of Confederate Veterans sued, claiming the individual members' protected free-speech rights had been infringed.

"Nobody is expressing any speech on a license plate, until someone puts it on the car and drives it around," George, the group's attorney, said.

Texas officials counter that a license plate issued by the state amounts to government speech, over which the government can reasonably exert control.

"The state of Texas, no less than a private individual, has the right to select the messages and viewpoints that it will promote and convey," Texas Solicitor General Jonathan Mitchell stated in a brief, "and Texas is not willing to propagate the Confederate battle flag by etching that image onto state-issued license plates that bear the state's name."