



## In Defense of Confederate License Plates

**Allowing the Confederate flag on Texas license plates would offend a lot of people, but Texas's decision to nix the Stars and Bars tramples the First Amendment.**

By Ilya Shapiro

March 20, 2015

The racist fraternity chant in Oklahoma has unified people of all political stripes around a very American response: condemning the speech while recognizing that it's protected by the First Amendment. Unlike in most countries, our Constitution prohibits the government—including a state college—from punishing people for the content of their expression.

Coincidentally, on March 23, the Supreme Court will hear a case that raises just this issue. This case, out of neighboring Texas, involves a group whose design for a specialty license plate was denied because it included a Confederate flag.

Although the Lone Star State recognizes April as Confederate History Month and spends January 19 celebrating Confederate Heroes Day, it would spare its citizens in this one context the sight of a flag it otherwise venerates: Texas has empowered its Department of Motor Vehicles to prevent people from being offended.

Yet even if the DMV knows better than anyone exactly what it takes to offend, it pursues its mission—the righteous task of ensuring that no motorist has to endure a half-second of micro-aggression—in a half-hearted way. Just consider the plate designs it has let slip by its censorious filter.

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The "Boy Scouts" plate undoubtedly ruffles the feathers of those who consider that group to be an anti-gay menace. The "Choose Life" plate similarly unnerves those who think that its message slanders women who choose abortion. What about "Come and Take It" (with a picture of a cannon) or "Fight Terrorism"? These messages would insult pacifists and those who disagree with U.S. foreign policy even if "Turn the Other Cheek" or "Come Home America" tags were also available. "Mighty Fine Burger" and "Dr Pepper" surely offend Michael Bloomberg's acolytes. Many Apache, Comanche, or Kiowa would take offense at a good ol' boy driving

around with a “Native Texan” plate. And wouldn’t a PETA supporter have a (soy) beef with the “Texas Trophy Hunters Association” plate? Finally, any true Texan would find the University of Oklahoma plate to be beyond the pale even before this month’s scandal.

Such is the problem with trying to eradicate offensive speech: Everything offends someone. As the Supreme Court said in the 1989 flag-burning case, also out of Texas: “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

Yet Texas’s law isn’t just unconstitutional, it’s unwise. Offensive speech shouldn’t merely be tolerated, but celebrated as evidence of democratic health—however odorous the products of a free society may be. Offensive speech should be considered inherently valuable, both to warn us of unpleasant truths and to push the societal envelope in ultimately liberating ways.

Offensive speech contributes to the marketplace of ideas by establishing the parameters for public discourse and thus expanding what can be acceptably discussed. The right to speak in a way that offends prevailing mores is an essential aspect of personal autonomy, a process that has also contributed to the expansion of civil rights.

Yet 54 years after Lenny Bruce—the comedian perhaps best known for pushing the envelope of propriety—was arrested onstage, offensive speech still needs protection. A case concerning a specialty license plate that is admittedly odious to some is the perfect vehicle, as it were, to use in its defense.

The law challenged here imbues the DMV with stunning discretion and exemplifies how our increasing cultural timidity is turning into a frightening movement to suppress and eliminate “offensive” speech. We particularly see this skittishness on college campuses, where the reigning belief is that if someone is offended, someone else must be punished. We also see it in European speech laws that criminalize everything from racist tweets to asking a police officer, “Is your horse gay?”

This Confederate flag case will likely turn on legalistic analysis of whether a license plate is government or private speech, or some hybrid. But regardless of who’s speaking, there’s something wrong with the Texas DMV’s mission to eradicate speech that “might be offensive to any member of the public.”

In short, one man’s offensive speech is another’s exercise of social commentary or personal expression. It would offend the First Amendment to allow Texas to tell us what’s offensive.

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