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Are Vanity License Plates Considered Government Speech or Public Speech?

Alan E Garfield



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ALAN GARFIELD

Can a state refuse to issue a vanity license plate with the image of the Confederate flag? This is an issue the Supreme Court will be wrestling with today.

The Sons of Confederate Veterans ("SCV") is a non-profit group dedicated to preserving the memory of confederate soldiers. In 2009, the group asked the Texas DMV to issue specialty license plates with the group's logo, which includes a confederate flag.

The DMV denied the request. It relied on a Texas law that allows the DMV to refuse designs that "might be offensive to any member of the public." The Department concluded that many people find the confederate flag offensive and even an expression of hatred.

SCV says that this denial violated its First Amendment rights.



This image provided by the Texas Department of Motor Vehicles shows the design of a proposed Sons of Confederate Veterans license plate. The Supreme Court on Monday will weigh a free-speech challenge to Texas' decision to refuse to issue a license plate bearing the Confederate battle flag. Specialty plates are big business in Texas, where drivers spent \$17.6 million last year to choose from among more than 350 messages the state allows on the plates. The issue boils down to what kind of speech this is considered.

Whose speech is this?

Keep in mind that SCV members are free to plaster their cars with confederate flag bumper stickers. The question is whether they have a right to make the government issue them a license plate with a confederate flag.

Part of the problem is that vanity license plates are an odd mixture of government and private speech. On the one hand, the government issues the plates, so people might naturally assume that the government has approved of the messages. On the other hand, the whole purpose of vanity plates is to allow individuals or groups to convey their own messages. When people see "ILUVSUE" on a car, they don't think the government loves Sue.

Whether vanity plates are government or private speech makes a difference. When the government speaks for itself, it's not restrained by the First Amendment. It can take positions on issues and advocate for these positions.

Hence, the government can run an anti-smoking campaign without running a pro-smoking campaign. It can celebrate diversity without celebrating

intolerance.

So, if vanity plates are government speech, Texas can choose not to issue plates with a confederate flag.

But if vanity plates are private speech, things get messy. The government can't tell people what they can or cannot say. That's censorship. It's precisely what the First Amendment forbids.

But what if the message is offensive?

Even if vanity plates are considered to be private speech, can't the government still refuse to issue plates that offend people? Does the government really have to issue plates with "4 NAZIS" "I♥ISIS," or "GO RAPE"?

Ordinarily, the government cannot stop people from espousing odious ideas. As long as the speech does not incite imminent unlawful action or

threaten particular individuals or groups, it's protected. So, yes, in America you can put awful bumper stickers on your car. Some of you may already have.

But do you have a right to have your prejudices molded into an official state license plate?

If not, what are the limits on the government's ability to refuse designs? Can the government approve plates that are pro-life but not pro-choice? Can it approve plates that say "Bob♥Sue" but not "Bob♥Joe"?

Texas in fact has already approved specialty plates for WWII veterans, Korean veterans, and Vietnam veterans. So how it can deny plates honoring Confederate veterans, particularly when Confederate Heroes Day is an official Texas state holiday?

Perhaps the answer lies in the Texas provision permitting the DMV to reject designs that offend people. But "offen-

siveness" is a squishy concept. Some people are offended by evolution. Others might be offended by gays, Scientists, or Tea-Party Republicans.

The Supreme Court usually says that government cannot suppress messages because people dislike them. Justice Brennan put it this way: "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."

But what, then, is the answer? Do states need to get out of the business of issuing vanity plates? Or is there a way for them to choose between plate designs without acting like censors?

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Alan Garfield is a professor at Widener University School of Law.