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U.S.

Supreme Court Says Texas Can Reject Confederate Flag License Plates

By ADAM LIPTAK JUNE 18, 2015

WASHINGTON — The Supreme Court ruled on Thursday that Texas did not violate the First Amendment when it refused to allow specialty license plates bearing the Confederate battle flag. Such plates, Justice Stephen G. Breyer wrote for the majority, are the government’s speech and are thus immune from First Amendment attacks.

The vote was 5 to 4. The court’s other three liberal members joined Justice Breyer’s majority opinion, as did Justice Clarence Thomas.

“As a general matter,” Justice Breyer wrote, “when the government speaks it is entitled to promote a program, to espouse a policy or to take a position.” Were this not so, he said, the government would be powerless to encourage vaccinations or promote recycling.

People use specialty license plates to suggest that the government endorses the messages they bear, he wrote. Otherwise, he said, people “could simply display the message in question in larger letters on a bumper sticker right next to the plate.”

In dissent, Justice Samuel A. Alito Jr. wrote that the majority opinion “establishes a precedent that threatens private speech that the government finds displeasing.”

Texas has hundreds of specialty plates. Many are for college alumni, sports fans, businesses and service organizations. Others send messages like “Choose Life,” “God Bless Texas” and “Fight Terrorism.” The license plates are, Justice Alito wrote, “little mobile billboards on which motorists can display their own messages.”

He mocked the notion that, say, plates saying “Rather Be Golfing” or celebrating the University of Oklahoma conveyed a government message. The first, he said, cannot represent state policy. The second, in Texas at least, bordered on treason during college football season, he wrote.

Justice Breyer relied heavily on the court’s 2009 decision in *Pleasant Grove City v. Summum*, which said that a city in Utah did not have to make room in a public park for a monument celebrating the tenets of minor religion even though the park included a donated Ten Commandments monument. The monuments the city chose to accept, the court said, were the government’s speech. And when the government speaks, the court added, it is free to say what it likes.

Justice Alito, who wrote the majority opinion in the *Summum* decision, said Justice Breyer “badly misunderstands” it. Monuments are different, Justice Alito said, as a matter of history, convention and “spatial limitations.”

Nine states have let drivers choose specialty license plates featuring the Confederate battle flag and honoring the Sons of Confederate Veterans, which says it seeks to celebrate Southern heritage. But Texas refused to allow the group’s plates, saying the flag was offensive.

When Texas turned down the one featuring the Confederate flag, the board of the Motor Vehicles Department said, “A significant portion of the public,” the board said, “associates the Confederate flag with organizations advocating expressions of hate directed toward people or groups that is demeaning to those people or groups.”

The flag appears on license plates in Alabama, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The Supreme Court’s decision on Thursday, *Walker v. Sons of Confederate Veterans*, No. 14-144, now allows them to ban the plates.

The Supreme Court last considered what the First Amendment had to say about license plates was in 1977, when it ruled in *Wooley v. Maynard* that New Hampshire could not require people to display plates bearing the state's motto, "Live Free or Die."

Justice Breyer said Thursday's decision was its mirror image. Texas cannot force the heritage group to convey its message, he wrote, and the group "cannot force Texas to include a Confederate battle flag on its specialty license plates."

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