



(Slip Opinion)

OCTOBER TERM, 2014

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Syllabus

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SUPREME COURT OF THE UNITED STATES

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WALKER, CHAIRMAN, TEXAS DEPARTMENT OF
MOTOR VEHICLES BOARD, ET AL. *v.* TEXAS
DIVISION, SONS OF CONFEDERATE VETERANS,
INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 14–144. Argued March 23, 2015—Decided June 18, 2015

Texas offers automobile owners a choice between general-issue and specialty license plates. Those who want the State to issue a particular specialty plate may propose a plate design, comprising a slogan, a graphic, or both. If the Texas Department of Motor Vehicles Board approves the design, the State will make it available for display on vehicles registered in Texas. Here, the Texas Division of the Sons of Confederate Veterans and its officers (collectively SCV) filed suit against the Chairman and members of the Board (collectively Board), arguing that the Board’s rejection of SCV’s proposal for a specialty plate design featuring a Confederate battle flag violated the Free Speech Clause. The District Court entered judgment for the Board, but the Fifth Circuit reversed, holding that Texas’s specialty license plate designs are private speech and that the Board engaged in constitutionally forbidden viewpoint discrimination when it refused to approve SCV’s design.

Held: Texas’s specialty license plate designs constitute government speech, and thus Texas was entitled to refuse to issue plates featuring SCV’s proposed design. Pp. 5–18.

(a) When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says. *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–468. A government is generally entitled to promote a program, espouse a policy, or take a position. Were the Free Speech Clause interpreted otherwise, “it is not easy to imagine how government would function.” *Id.*, at 468. That is not to

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say that a government’s ability to express itself is without restriction. Constitutional and statutory provisions outside of the Free Speech Clause may limit government speech, and the Free Speech Clause itself may constrain the government’s speech if, for example, the government seeks to compel private persons to convey the government’s speech. Pp. 5–6.

(b) This Court’s precedents regarding government speech provide the appropriate framework through which to approach the case. Pp. 6–17.

(1) The same analysis the Court used in *Summum*—to conclude that a city “accepting a privately donated monument and placing it on city property” was engaging in government speech, 555 U. S., at 464—leads to the conclusion that government speech is at issue here. First, history shows that States, including Texas, have long used license plates to convey government speech, *e.g.*, slogans urging action, promoting tourism, and touting local industries. *Cf. id.*, at 470. Second, Texas license plate designs “are often closely identified in the public mind with the [State].” *Id.*, at 472. Each plate is a government article serving the governmental purposes of vehicle registration and identification. The governmental nature of the plates is clear from their faces: the State places the name “TEXAS” in large letters across the top of every plate. Texas also requires Texas vehicle owners to display license plates, issues every Texas plate, and owns all of the designs on its plates. The plates are, essentially, government IDs, and ID issuers “typically do not permit” their IDs to contain “message[s] with which they do not wish to be associated,” *id.*, at 471. Third, Texas maintains direct control over the messages conveyed on its specialty plates, by giving the Board final approval over each design. Like the city government in *Summum*, Texas “has effectively controlled the messages [conveyed] by exercising final approval authority over their selection.” *Id.*, at 473. These considerations, taken together, show that Texas’s specialty plates are similar enough to the monuments in *Summum* to call for the same result. Pp. 7–12.

(2) Forum analysis, which applies to government restrictions on purely private speech occurring on government property, *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 800, is not appropriate when the State is speaking on its own behalf. The parties agree that Texas’s specialty license plates are not a traditional public forum. Further, Texas’s policies and the nature of its license plates indicate that the State did not intend its specialty plates to serve as either a designated public forum—where “government property . . . not traditionally . . . a public forum is intentionally opened

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up for that purpose,” *Sumnum, supra*, at 469—or a limited public forum—where a government “reserv[es a forum] for certain groups or for the discussion of certain topics,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829. The State exercises final authority over the messages that may be conveyed by its specialty plates, it takes ownership of each specialty plate design, and it has traditionally used its plates for government speech. These features of Texas specialty plates militate against a determination that Texas has created a public forum. Finally, the plates are not a nonpublic forum, where the “government is . . . a proprietor, managing its internal operations.” *International Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U. S. 672, 678–679. The fact that private parties take part in the design and propagation of a message does not extinguish the governmental nature of the message or transform the government’s role into that of a mere forum provider. See *Sumnum, supra*, at 470–471. Nor does Texas’s requirement that vehicle owners pay annual fees for specialty plates mean that the plates are a forum for private speech. And this case does not resemble other nonpublic forum cases. *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U. S. 37, 48–49; *Lehman v. Shaker Heights*, 418 U. S. 298; and *Cornelius, supra*, at 804–806, distinguished. Pp. 13–17.

(c) The determination that Texas’s specialty license plate designs are government speech does not mean that the designs do not also implicate the free speech rights of private persons. The Court has acknowledged that drivers who display a State’s selected license plate designs convey the messages communicated through those designs. See *Wooley v. Maynard*, 430 U. S. 705, 717, n. 15. The Court has also recognized that the First Amendment stringently limits a State’s authority to compel a private party to express a view with which the private party disagrees. Just as Texas cannot require SCV to convey “the State’s ideological message,” *id.*, at 715, SCV cannot force Texas to include a Confederate battle flag on its specialty license plates. Pp. 17–18.

759 F. 3d 388, reversed.

BREYER, J., delivered the opinion of the Court, in which THOMAS, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and KENNEDY, JJ., joined.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 14–144

JOHN WALKER, III, CHAIRMAN, TEXAS DEPARTMENT
OF MOTOR VEHICLES BOARD, ET AL., PETITIONERS
v. TEXAS DIVISION, SONS OF CONFEDERATE
VETERANS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June 18, 2015]

JUSTICE BREYER delivered the opinion of the Court.

Texas offers automobile owners a choice between ordinary and specialty license plates. Those who want the State to issue a particular specialty plate may propose a plate design, comprising a slogan, a graphic, or (most commonly) both. If the Texas Department of Motor Vehicles Board approves the design, the State will make it available for display on vehicles registered in Texas.

In this case, the Texas Division of the Sons of Confederate Veterans proposed a specialty license plate design featuring a Confederate battle flag. The Board rejected the proposal. We must decide whether that rejection violated the Constitution’s free speech guarantees. See Amdts. 1, 14. We conclude that it did not.

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Texas law requires all motor vehicles operating on the State’s roads to display valid license plates. See Tex. Transp. Code Ann. §§502.001 (West Supp. 2014), 504.001

(2013), 504.943 (Supp. 2014). And Texas makes available several kinds of plates. Drivers may choose to display the State's general-issue license plates. See Texas Dept. of Motor Vehicles, Motor Vehicle Registration Manual 9.1 (Apr. 2015). Each of these plates contains the word "Texas," a license plate number, a silhouette of the State, a graphic of the Lone Star, and the slogan "The Lone Star State." Texas Dept. of Motor Vehicles, The Texas Classic FAQs (July 16, 2012), online at <http://www.txdmv.gov/motorists/license-plates> (all Internet materials as visited June 16, 2015, and available in Clerk of Court's case file). In the alternative, drivers may choose from an assortment of specialty license plates. §504.008(b) (West 2013). Each of these plates contains the word "Texas," a license plate number, and one of a selection of designs prepared by the State. See *ibid.*; Specialty License Plates, <http://www.txdmv.gov/motorists/license-plates/specialty-license-plates> (displaying available Texas specialty plates); Create a Plate: Your Design, <http://www.myplates.com/BackgroundOnly> (same). Finally, Texas law provides for personalized plates (also known as vanity plates). 43 Tex. Admin. Code §217.45(c)(7) (2015). Pursuant to the personalization program, a vehicle owner may request a particular alphanumeric pattern for use as a plate number, such as "BOB" or "TEXPL8."

Here we are concerned only with the second category of plates, namely specialty license plates, not with the personalization program. Texas offers vehicle owners a variety of specialty plates, generally for an annual fee. See §217.45(b)(2). And Texas selects the designs for specialty plates through three distinct processes.

First, the state legislature may specifically call for the development of a specialty license plate. See Tex. Transp. Code §§504.602–504.663 (West 2013 and Supp. 2014). The legislature has enacted statutes authorizing, for example, plates that say "Keep Texas Beautiful" and "Mothers

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