

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 JOHN WALKER, III, IN HIS :

4 OFFICIAL CAPACITY AS :

5 CHAIRMAN OF THE BOARD, ET AL., :

6 Petitioners : No. 14-144

7 v. :

8 TEXAS DIVISION, SONS OF :

9 CONFEDERATE VETERANS, ET AL. :

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11 Washington, D.C.

12 Monday, March 23, 2015

13

14 The above-entitled matter came on for oral  
15 argument before the Supreme Court of the United States  
16 at 10:03 a.m.

17 APPEARANCES:

18 SCOTT A. KELLER, ESQ., Solicitor General, Austin, Tex.;

19 on behalf of Petitioners.

20 R. JAMES GEORGE, ESQ., Austin, Tex.; on behalf of

21 Respondents.

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10	On behalf of the Petitioners	55
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1 P R O C E E D I N G S

2 (10:03 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear  
4 argument first this morning in Case No. 14-144, John  
5 Walker v. The Texas Division of the Sons of Confederate  
6 Veterans.

7 Mr. Keller.

8 ORAL ARGUMENT OF SCOTT A. KELLER

9 ON BEHALF OF PETITIONERS

10 MR. KELLER: Thank you, Mr. Chief Justice,  
11 and may it please the Court:

12 Messages on Texas license plates are  
13 government speech. The State of Texas etches its name  
14 onto each license plate and Texas law gives the State  
15 sole control and final approval authority over  
16 everything that appears on a license plate. As in  
17 Sumnum, Texas is not abridging any traditional free  
18 speech rights. Motorists remain free to speak in all  
19 sorts of ways, including on their cars through a bumper  
20 sticker right next to a license plate, or a car-size  
21 paint job or a window decal.

22 But the First Amendment does not mean that a  
23 motorist can compel any government to place its  
24 imprimatur on the Confederate battle flag on its license  
25 plate.

1 JUSTICE GINSBURG: Well, one of -- one of  
2 the problems with the scheme is it's a nebulous  
3 standard: Would it be regarded as offensive to many  
4 people? I mean, is it government speech to say "Mighty  
5 fine burgers" to advertise a product?

6 MR. KELLER: The government -- yes, Justice  
7 Ginsburg. The government is allowed to choose the  
8 messages that it wishes to. It's simply because it has  
9 approved parochial messages or has endorsed messages or  
10 is accepting and generating revenue. To get -- to  
11 propagate those messages doesn't defeat the fact that it  
12 is government speech.

13 When the Library of Congress, for instance,  
14 takes sponsorship from The Washington Post or Wells  
15 Fargo for the National Book Festival, that's still a  
16 government speech when they then put it on their  
17 website.

18 JUSTICE ALITO: Suppose Texas erected 500  
19 electronic billboards around the State, and on those  
20 billboards they posted some government messages, wear  
21 your seatbelt when you're driving, for example. But  
22 then at the bottom people could put a message of their  
23 choice. Would that be government speech?

24 MR. KELLER: Justice Alito, I think the  
25 portion that the government had final approval authority

1 and sole control over, that would be government speech.  
2 If the government, though, doesn't have sole control or  
3 final approval authority over another portion, I think  
4 that could be --

5 JUSTICE ALITO: No, the bottom, the  
6 government has the same kind of approval authority that  
7 it has here. It'll allow people to say inoffensive  
8 things, but if they say something that's -- that's  
9 offensive, then they won't allow that. That would be  
10 government speech?

11 MR. KELLER: It would be government speech  
12 under -- I think the best reading of both Sumnum and  
13 Johanns together is precedent; that you have final  
14 approval authority when the government isn't abridging  
15 other traditional free speech rights.

16 But even if that weren't the test --

17 JUSTICE SOTOMAYOR: But, I'm sorry. I don't  
18 understand. Almost anything the government does, it has  
19 final authority to veto. Whether it's a school or a  
20 government website, it always retains the authority to  
21 say no. The issue is when can it say no  
22 constitutionally.

23 So I don't think it's merely that. And in  
24 Sumnum, the government actually created the words that  
25 were -- that were being advertised. So isn't that

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