

[PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-13868

RICHARD LEAKE,
MICHAEL DEAN,

Plaintiffs-Appellants,

versus

JAMES T. DRINKARD,
In his personal capacity and official capacity as
Assistant City Administrator of City of Alpharetta, Georgia,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:19-cv-03463-WMR

Before WILLIAM PRYOR, Chief Judge, LAGOA, Circuit Judge, and SCHLESINGER,* District Judge.

WILLIAM PRYOR, Chief Judge:

In *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, the Supreme Court clarified that, “[w]hen [the] government speaks, it is not barred by the Free Speech Clause from determining the content of what it says.” 576 U.S. 200, 207 (2015). Some of the Sons of Confederate Veterans did not get the message. A member, Richard Leake, applied to participate in the Old Soldiers Day Parade, a pro-American veterans parade funded and organized by the City of Alpharetta, Georgia. The City informed Leake that the Sons of Confederate Veterans would be allowed to participate, but only if it agreed not to fly the Confederate battle flag. Not content with this offer, Leake and Michael Dean, another Son, filed a civil-rights action against City officials, 42 U.S.C. § 1983, alleging that the City violated their constitutional rights to speak freely under the First and Fourteenth Amendments. The district court held that the

* Honorable Harvey Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

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Parade constituted government speech and entered summary judgment against the Sons. Because governments are not obliged under the First and Fourteenth Amendments to permit the presence of a rebellious army's battle flag in the pro-veterans parades that they fund and organize, we affirm.

I. BACKGROUND

The Old Soldiers Day Parade began after the Civil War in the City of Alpharetta to honor veterans of that war, but the Parade was discontinued after a few years. The City resumed the Parade in 1952 after a small group of residents wanted to recognize local war veterans. The City has sponsored the Parade every year since then.

The 67th Annual Old Soldiers Day Parade was held on August 3, 2019. On its website, the City promoted the Parade “as a way to celebrate and honor all war veterans, especially those from Alpharetta, who have defended the rights and freedoms enjoyed by everyone in the United States of America.” “The goal of this parade,” according to the City’s advertisement, “is to celebrate American war veterans and recognize their service to our country.” The City’s advertisement identified the “City of Alpharetta and American Legion Post 201” as “hosts [of] the Annual Old Soldiers Day Parade.” Although the Legion was involved, the City was the Parade’s primary financial sponsor and was responsible for almost all its costs (about \$28,400). By contrast, the Legion did not financially contribute any significant amount.

This controversy arose from the process for determining which private organizations would be permitted to participate in the Parade. That process began with an application. And the application identified the theme of the Parade: “*The American Legion - A Century of Service*.” The application form included logos of both the Legion and the City. It instructed applicants to mail or fax the application to the “Parade Marshal” at “American Legion Post 201 c/o City of Alpharetta Special Events” and listed government mailing and email addresses. The final decision about whether to permit an entity’s participation in the Parade was made by the City based on the message the Mayor and City Council wanted the Parade to communicate. The Legion did not determine who participated in the Parade.

On the Monday after Independence Day in 2019, Richard Leake completed an application on behalf of the Roswell Mills Camp Sons of Confederate Veterans, of which he is a member. The application asked for a detailed description of the Sons of Confederate Veterans’s float. Leake wrote that there would be a “[t]ruck pulling trailer with participants holding unit flags.” The application also asked applicants to “write a description of what you would like to say about your group or organization as you pass the Reviewing Stand.” Leake wrote that they would say that the Sons of Confederate Veterans is an “organization dedicated to preserving the memory of our ancestors who served in the War Between the States and ensuring that the Southern view of that conflict is preserved.” The application required that the Sons of Confederate

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Veterans agree to “abide by all rules and regulations set forth by the event organizers[, the City of Alpharetta and the American Legion Post 201,] in the Old Soldiers Day Parade.” Leake signed the application.

The following day, James Drinkard, the Assistant City Administrator, sent a letter to Leake in response to his application. The letter was sent “following approval from Mayor Gilvin.” In the letter, Drinkard reiterated that the purpose of the Parade is to “unite our community” to “celebrat[e] American war veterans,” and that, in the light of that purpose, “there is cause to question the appropriateness of participation by an organization devoted exclusively to commemorating and honoring Confederate soldiers.” (Internal quotation marks omitted.)

Drinkard’s letter stated “that the Confederate Battle Flag has become a divisive symbol that a large portion of our citizens see as symbolizing oppression and slavery.” In the City’s view, that divisiveness would draw “the spotlight away from the goals of the . . . Parade and the service of our *American* war veterans.” (Emphasis added.) The letter continued, “the City of Alpharetta will maintain its decision, supported unanimously by Mayor Gilvin and the City Council, to not allow the Confederate Battle Flag to be flown in the Old Soldiers Day Parade.”

The City offered to allow the Sons of Confederate Veterans to participate in the Parade “absent the Confederate Battle Flag.” The Sons of Confederate Veterans would also have to agree not to do anything “that would detract from the event goal of uniting our

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