

***Walker v. Texas Division, Sons of Confederate War Veterans, Inc. (2015)***

576 U.S. 200

*Texas law requires all motor vehicles to display valid license plates. Drivers may choose the standard Texas plate or may for a fee choose a specialty plate, either one authorized by the state legislature or one proposed by a nonprofit organization seeking to sponsor a specialty plate. Texas law vests in the Department of Motor Vehicles Board the authority to approve or disapprove proposed plates. In 2009, the Sons of Confederate Veterans, Texas Division (SCV) applied to sponsor a specialty license plate. At the bottom of the proposed plate were the words “SONS OF CONFEDERATE VETERANS.” At the side was the organization’s logo, a square Confederate battle flag framed by the words “Sons of Confederate Veterans 1896.” A faint Confederate battle flag appeared in the background on the lower portion of the plate. The Board voted unanimously against issuing the plate “because public comments had shown that many members of the general public find the design offensive, and because such comments are reasonable.” SCV sued the chairman and members of the Board, arguing that the Board’s decision violated the Free Speech Clause of the First Amendment. The District Court ruled for the Board, but the Court of Appeals for the Fifth Circuit reversed, and the Supreme Court granted certiorari.*

Opinion of the Court: Breyer, Thomas, Ginsburg, Sotomayor, Kagan.

Dissenting opinion: Alito, Roberts, Scalia, Kennedy.

**JUSTICE BREYER delivered the opinion of the Court.**

II

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* (2009). Were the Free Speech Clause interpreted otherwise, government would not work. How could a city government create a successful recycling program if officials, when writing householders asking them to recycle cans and bottles, had to include in the letter a long plea from the local trash disposal enterprise demanding the contrary? How could a state government effectively develop programs designed to encourage and provide vaccinations, if officials also had to voice the perspective of those who oppose this type of immunization? We have therefore refused “to hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternative goals.” *Rust v. Sullivan* (1991). That is not to 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. But, as a general matter, when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf.

III

In our view, specialty license plates issued pursuant to Texas’s statutory scheme convey government speech. Our reasoning rests primarily on our analysis in *Summum*, a recent case that presented a similar problem. In *Summum*, we considered a religious organization’s request to

erect in a 2.5-acre city park a monument setting forth the organization’s religious tenets. In the park were 15 other permanent displays. At least 11 of these—including a wishing well, a September 11 monument, a historic granary, the city’s first fire station, and a Ten Commandments monument—had been donated to the city by private entities. The religious organization argued that the Free Speech Clause required the city to display the organization’s proposed monument because, by accepting a broad range of permanent exhibitions at the park, the city had created a forum for private speech in the form of monuments. This Court rejected the organization’s argument. We held that the city, even when “accepting a privately donated monument and placing it on city property,” had “engaged in expressive conduct.” The speech at issue was “best viewed as a form of government speech” and “therefore not subject to scrutiny under the Free Speech Clause.” And, in reaching that conclusion, the Court rejected the premise that the involvement of private parties in designing the monuments was sufficient to prevent the government from controlling which monuments it placed in its own public park.

## B

Our analysis in *Summum* leads us to the conclusion that here, too, government speech is at issue. First, the history of license plates shows that, insofar as license plates have conveyed more than state names and vehicle identification numbers, they long have communicated messages from the States. Second, Texas license plate designs “are often closely identified in the public mind with the [State].” Texas license plates are, essentially, government IDs. And issuers of ID “typically do not permit” the placement on their IDs of “message[s] with which they do not wish to be associated.” Third, Texas maintains direct control over the messages conveyed on its specialty plates. Texas law provides that the State “has sole control over the design, typeface, color, and alphanumeric pattern for all license plates.” The Board must approve every specialty plate design proposal before the design can appear on a Texas plate. And the Board and its predecessor have actively exercised this authority. Texas asserts, and SCV concedes, that the State has rejected at least a dozen proposed designs. Accordingly, like the city government in *Summum*, Texas “has effectively controlled the messages conveyed by exercising final approval authority over their selection.” This final approval authority allows Texas to choose how to present itself and its constituency. Thus, Texas offers plates celebrating the many educational institutions attended by its citizens. But it need not issue plates deriding schooling. Texas offers plates that pay tribute to the Texas citrus industry. But it need not issue plates praising Florida’s oranges as far better. And Texas offers plates that say “Fight Terrorism.” But it need not issue plates promoting al Qaeda. . . .

## IV

Our 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. We have acknowledged that drivers who display a State’s selected license plate designs convey the messages communicated through those designs. And we have 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. See *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.* (1995); *West Virginia Bd. of Ed. v. Barnette* (1943). But here, compelled private speech is not at issue. And just as Texas cannot require SCV to convey “the State’s ideological message,” SCV cannot force Texas to include a Confederate battle flag on its specialty license plates.

For the reasons stated, we hold that Texas’s specialty license plate designs constitute government speech and that Texas was consequently entitled to refuse to issue plates featuring SCV’s proposed design. Accordingly, the judgment of the United States Court of Appeals for the Fifth Circuit is

*Reversed.*

**JUSTICE ALITO, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join, dissenting.**

Here is a test. Suppose you sat by the side of a Texas highway and studied the license plates on the vehicles passing by. You would see, in addition to the standard Texas plates, an impressive array of specialty plates. (There are now more than 350 varieties.) You would likely observe plates that honor numerous colleges and universities. You might see plates bearing the name of a high school, a fraternity or sorority, the Masons, the Knights of Columbus, the Daughters of the American Revolution, a realty company, a favorite soft drink, a favorite burger restaurant, and a favorite NASCAR driver.

As you sat there watching these plates speed by, would you really think that the sentiments reflected in these specialty plates are the views of the State of Texas and not those of the owners of the cars? If a car with a plate that says “Rather Be Golfing” passed by at 8:30 am on a Monday morning, would you think: “This is the official policy of the State—better to golf than to work?” If you did your viewing at the start of the college football season and you saw Texas plates with the names of the University of Texas’s out-of-state competitors in upcoming games—Notre Dame, Oklahoma State, the University of Oklahoma, Kansas State, Iowa State—would you assume that the State of Texas was officially (and perhaps treasonously) rooting for the Longhorns’ opponents? And when a car zipped by with a plate that reads “NASCAR-24 Jeff Gordon,” would you think that Gordon (born in California, raised in Indiana, resides in North Carolina), is the official favorite of the State government?

The Court says that all of these messages are government speech. This capacious understanding of government speech takes a large and painful bite out of the First Amendment. Specialty plates may seem innocuous. They make motorists happy, and they put money in a State’s coffers. But the precedent this case sets is dangerous. While all license plates unquestionably contain *some* government speech (*e.g.*, the name of the State and the numbers and/or letters identifying the vehicle), the State of Texas has converted the remaining space on its specialty plates into little mobile billboards on which motorists can display their own messages. And what Texas did here was to reject one of the messages that members of a private group wanted to post on some of these little billboards because the State thought that many of its citizens would find the message offensive. That is blatant viewpoint discrimination.

If the State can do this with its little mobile billboards, could it do the same with big, stationary billboards? Suppose that a State erected electronic billboards along its highways. Suppose that the State posted some government messages on these billboards and then, to raise money, allowed private entities and individuals to purchase the right to post their own messages. And suppose that the State allowed only those messages that it liked or found not too controversial. Would that be constitutional?

What if a state college or university did the same thing with a similar billboard or a campus bulletin board or dorm list serve? What if it allowed private messages that are consistent with

prevailing views on campus but banned those that disturbed some students or faculty? Can there be any doubt that these examples of viewpoint discrimination would violate the First Amendment? I hope not, but the future uses of today's precedent remain to be seen.

Relying almost entirely on one precedent—*Pleasant Grove City v. Summum*—the Court holds that messages that private groups succeed in placing on Texas license plates are government messages. The Court badly misunderstands *Summum*. In *Summum*, a private group claimed the right to erect a large stone monument in a small city park. The 2.5-acre park contained 15 permanent displays, 11 of which had been donated by private parties. The central question concerned the nature of the municipal government's conduct when it accepted privately donated monuments for placement in its park: Had the city created a forum for private speech, or had it accepted donated monuments that expressed a government message? We held that the monuments represented government speech, and we identified several important factors that led to this conclusion.

First, governments have long used monuments as a means of expressing a government message. Here in the United States, important public monuments like the Statue of Liberty, the Washington Monument, and the Lincoln Memorial, express principles that inspire and bind the Nation together. Thus, long experience has led the public to associate public monuments with government speech. Second, there is no history of landowners allowing their property to be used by third parties as the site of large permanent monuments that do not express messages that the landowners wish to convey. Third, spatial limitations played a prominent part in our analysis. Because only a limited number of monuments can be built in any given space, governments do not allow their parks to be cluttered with monuments that do not serve a government purpose, a point well understood by those who visit parks and view the monuments they contain. These characteristics, which rendered public monuments government speech in *Summum*, are not present in Texas's specialty plate program.

### III

What Texas has done by selling space on its license plates is to create what we have called a limited public forum. It has allowed state property (*i.e.*, motor vehicle license plates) to be used by private speakers according to rules that the State prescribes. Under the First Amendment, however, those rules cannot discriminate on the basis of viewpoint. But that is exactly what Texas did here. The Confederate battle flag is a controversial symbol. To the Texas Sons of Confederate Veterans, it is said to evoke the memory of their ancestors and other soldiers who fought for the South in the Civil War. To others, it symbolizes slavery, segregation, and hatred. Whatever it means to motorists who display that symbol and to those who see it, the flag expresses a viewpoint. The Board rejected the plate design because it concluded that many Texans would find the flag symbol offensive. That was pure viewpoint discrimination. Because the Court approves this violation of the First Amendment, I respectfully dissent.