

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS DIVISION, SONS OF §
CONFEDERATE VETERANS, INC., a Texas §
corporation, GRANVEL J. BLOCK, §
individually, and RAY W. JAMES, §
individually §

Plaintiffs, §

v. §

TEXAS DEPARTMENT OF MOTOR §
VEHICLE BOARD, VICTOR T. §
VANDERGRUFF, in his official capacity as §
Chairman of the Board, CLIFFORD BUTLER, §
in his official capacity as a Member of the §
Board, RAYMOND PALACIOS, JR., in his §
official capacity as a Member of the Board, §
BLAKE INGRAM, in his official capacity as a §
Member of the Board, CHERYL JOHNSON, in §
her official capacity as a Member of the Board, §
LAURA RYAN, in her official capacity as a §
Member of the Board, VICTOR RODRIGUEZ, §
in his official capacity as a Member of the §
Board, MARVIN RUSH, in his official §
capacity as a Member of the Board, and JOHN §
WALKER III, in his official capacity as a §
Member of the Board §

CIVIL CASE NO. 1: 11-cv-01049

Defendants.

ORIGINAL COMPLAINT

NOW COME Plaintiffs Texas Division, Sons of Confederate Veterans, Inc. (“Texas SCV”), Granvel J. Block, and Ray W. James complaining of the Texas Department of Motor Vehicles Board (“the Board”), through its members, Victor T. Vandergriff, Clifford Butler, Raymond Palacios, Jr., Blake Ingram, Laura Ryan, Victor Rodriguez,

Marvin Rush, and John Walker III and for cause of action would respectfully show this Court as follows:

I. Nature of the Action

1.1 This action is filed pursuant to 42 U.S.C. §1983 to vindicate the rights secured to the Texas SCV by the First and Fourteenth Amendments to the Constitution.

1.2 The Texas SCV is a non-profit organization that works diligently to preserve the memory and reputation of the Confederate soldiers, emphasizing the virtues of their fight for the preservation of liberty and freedom. The organization, through its local camps, provides a service to communities through preservation of monuments, flags, and other historical materials, as well as through educational activities and other civic activities.

Like many other non-profit organizations in Texas, the Texas SCV sought from the State of Texas, through the Department Motor Vehicles Board, approval of a specialty license plate, both to raise awareness of their endeavors and to raise additional money to fund their activities.

1.3 Defendants are members of the Texas Department of Motor Vehicles Board who were involved with the decision to reject the Texas SCV's application for a specialty plate on the basis that it is "offensive to any member of the public," thus abridging the organization's rights to freedom of speech under the Constitution.

1.4 Accordingly, the Texas SCV seeks appropriate injunctive relief, in the form of a preliminary injunction and, after trial, a mandatory permanent injunction, enjoining the

Defendants to approve the Texas SCV's application for a specialty plate and implementing such a plate.

II. Parties

2.1 Plaintiff Sons of Confederate Veterans, Texas Division, Inc. is a Texas non-profit corporation. The members of SCV are descendants of those soldiers who fought in the armed forces of the Confederate States of America during the American Civil War.

2.2 Plaintiff Granvel J. Block is an individual who resides in Orange, Texas and is the Lieutenant Commander of the Texas Division of the Sons of Confederate Veterans.

2.3 Plaintiff Ray W. James is an individual who resides in College Station, Texas, and is the Past Commander of the Texas Division of the Sons of Confederate Veterans.

2.4 Defendant Texas Department of Motor Vehicles Board is the board of the Texas Department of Motor Vehicles and is responsible for the approval or denial of specialty license plates. It may be served with process by service upon its Chairman, Victor T. Vandergriff at his offices at 4000 Jackson Ave., Austin, TX 78731.

2.5 Defendant Victor T. Vandergriff is the current Chairman of the Board. Mr. Vandergriff is being sued herein solely in his official capacity as the Chairman of the Board, and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

2.6 Defendant Clifford Butler is a member of the Board. Mr. Butler is being sued herein solely in his official capacity as a member of the Board, and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

2.7 Defendant Raymond Palacios, Jr. is a member of the Board. Mr. Palacios is being sued herein solely in his official capacity as a member of the Board, , and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

2.8 Defendant Blake Ingram is a member of the Board. Mr. Ingram is being sued herein solely in his official capacity as a member of the Board, and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

2.9 Defendant Laura Ryan is a member of the Board. Ms. Ryan is being sued herein solely in her official capacity as a member of the Board, and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

2.10 Defendant Victor Rodriguez is a member of the Board. Mr. Rodriguez is being sued herein solely in his official capacity as a member of the Board, and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

2.11 Defendant Marvin Rush is a member of the Board. Mr. Rush is being sued herein solely in his official capacity as a member of the Board, and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

2.12 Defendant John Walker III is a member of the Board. Mr. Walker is being sued herein solely in his official capacity as a member of the Board, and may be served at the Board offices at 4000 Jackson Ave., Austin, TX 78731.

III. Venue and Jurisdiction

3.1 Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2), as a substantial part of the events or omissions giving rise to the claim occurred in such judicial district.

Additionally, venue is proper in this Court pursuant to 28.U.S.C. §1391(b)(1), where all Defendants reside. The residence of the Defendants, as public officials sued for their official acts and where they performed the acts at issue, is such judicial district.

3.2 The court has original jurisdiction over this matter pursuant to 28 U.S.C. §1331, as SCV's claims arise under the Constitution of the United States, specifically the First Amendment and the Fourteenth Amendment applying it to the states.

IV. Facts

A. General Background of the Organization and its Seal

4.1 Texas SCV is a division of a national organization, the Sons of Confederate Veterans ("SCV"), which is the oldest hereditary organization for male descendants of Confederate soldiers and was originally organized at Richmond, Virginia in 1896. The membership consists of descendants of Confederate veterans, including African-American members and Hispanic members, whose ancestors fought for the Confederacy.

4.2 The mission of the organization is "to defend the Confederate soldier's good name, be the guardian of his history, perpetuate the principles that he defended, and see that the true history of the South is presented to future generations."¹ In doing so, the organization raises and donates money for the conservation and preservation of Confederate flags and records; identifies, preserves and marks the graves of Confederate veterans; preserves memorials to veterans and Confederate units; supports museums;

¹ Dr. Buddy Patterson, *A Brief History of the Sons of Confederate Veterans*, <http://www.texas-scv.org/scvHistory.php> (quoting speech by Lt. Gen. Stephen D. Lee of the Confederate States Army addressing the Sons of Confederate Veterans in 1906).

preserves battlefields threatened by development; and educates children and adults about the life of the Confederate soldier.

4.3 The SCV serves as a historical, patriotic, and non-political organization dedicated to insuring that the history of the period from 1861-1865 is preserved. The SCV's constitution expressly provides that the "SCV shall be strictly patriotic, historical, educational, benevolent, non-political, non-racial and non-sectarian."

4.4 The structure of the national SCV is divided into states, and further into local "camps." The SCV has programs at the local, state, and national levels which offer a variety of activities: preservation work, marking Confederate soldier's graves, historical re-enactments, scholarly publications, and regular meetings to discuss the military and political history of the Civil War.

4.5 There are local camps of the SCV in thirty-seven states as well as in England, Scotland, Australia, Brazil, and Europe, reflecting the descendants of Confederate veterans who were both American-born and foreign-born soldiers.

4.6 The SCV is strongly protective of preserving the memory and reputation of the Confederate soldiers, including the motives for their sacrifice, emphasizing the virtues of their fight for the preservation of liberty and freedom.

4.7 Texas SCV camps participate in a variety of civic activities, such as the state Adopt-a-Highway Program, and the preservation, recognition, and creation of Confederate veteran monuments both at the county level and the state level.

4.8 The seal of the SCV contains the Battle Flag of the Confederate States of America, originally from the Battle Flag of the Army of Northern Virginia, designed under General P.G.T. Beauregard in order to avoid confusion on the battlefield due to the striking similarities between the first national flag of the Confederacy and the flag of the Union.

4.9 The flag is square, rather than an oblong rectangle, covered by a blue saltire² with a thirteen white five-pointed stars to represent the states of the Confederacy.

4.10 Although this flag was not the national Confederate flag, it was the battle flag under which Confederate soldiers, including Texas soldiers, fought in multiple battles.

4.11 This battle flag was initially adopted by SCV's predecessor, the United Confederate Veterans, thus is also representative as a "soldier's flag."

4.12 As reflected in early issues of the SCV periodical *The Confederate Veteran*, the seal of the national organization, containing the square soldier's flag, has been in use by the organization since at least 1924.³

B. Specialty License Plates for Organizations

4.13 The State of Texas has in recent years developed a variety of ways to personalize license plates as a source of revenue for the State. These include "specialty plates" available to Texas drivers for an additional fee that specifically benefit charity and non-profit organizations.

² In fact, as discussed in [The Confederate Battle Flag: America's Most Embattled Emblem](#) by John M. Coski, one of the reasons for the use of the saltire, or St. Andrew's Cross, rather than an upright cross was that the designer, William Porcher Miles, the former chair of the Committee on the Flag and Seal, had received comments made by Southern Jews and Protestants about the overtly religious nature of the upright cross.

³ In 2002, United States Patent and Trademark office approved this seal as a trademarked corporate logo for the organization. The SCV sought to trademark this seal in order to assure that the seal would only be used with SCV approval.

4.14 There are a variety of these specialty plates currently available to Texas drivers, and including a wide variety of charitable and non-profit organizations, including “Ducks Unlimited”, “Fight Terrorism”, “Knights of Columbus”, “Boy Scouts of America” and “Choose Life.” Most of these plates bear the seal of that organization and a motto or the organization name.

4.15 The specialty license plates generally cost the driver \$30 more than the normal registration fees annually, with \$22 of that amount going to a state agency.

4.16 Often the state’s portion of the money goes to a state agency related to the purpose of a given organization. Money from the Ducks Unlimited specialty plate “goes to the Texas Parks and Wildlife Department to support Texas Ducks Unlimited efforts to conserve and restore wetlands and associated habitats for wildlife and provide societal benefits such as clean water, flood control, and groundwater recharge.”⁴

4.17 In 2010 alone, the State of Texas has received approximately \$16 million in specialty plate sales. The program has generated approximately \$131 million through fiscal 2010 since its inception in the mid-1990s.

4.18 This program is not only lucrative for the state, but is also a useful money-making activity for charities and non-profit organizations. The top sellers in 2010 made hundreds of thousands of dollars for their organization: the “Animal Friendly” plate made \$518,832, shared with animal-welfare groups across the state, the “State of the Arts” plate, for statewide arts programs, made \$485,302, and the “Keep Texas Wild” plate for state wildlife conservation made \$388,279.

⁴ Available at: <https://rts.texasonline.state.tx.us/NASApp/txdotrts/SpecialPlateOrderServlet?grpId=60&pltid=79>
Original Complaint

4.19 Currently, the SCV has specialty automobile license plates available to vehicle drivers in Georgia, North Carolina, Alabama, Maryland, Mississippi, Louisiana, South Carolina, Tennessee, and Virginia.

C. Texas SCV Submits its Initial Application for a License

4.20 Texas SCV initially applied for a specialty license plate in Texas with the Department of Transportation, the proper agency at the time, in August 2009.

4.21 Particularly at the time the Texas SCV initially applied, they were interested in having a specialty plate in advance of the Civil War Sesquicentennial, April 12, 2011. Having a plate before that event would allow for the organization to acquire additional funds prior the Sesquicentennial, providing for the organization to have the monetary means for additional events. Further, having a specialty plate at the time of the Sesquicentennial would have allowed for additional plate sales with members and non-members interested in commemorating the historic events.

4.22 The Texas SCV properly submitted its application form for a plate, and included that the nominating state agency was the Texas General Land Office, and the nominating officer was Commissioner Jerry Patterson, who is also a member of the Texas SCV.

4.23 In its application, the Texas SCV noted that it intended to use the funds from the plate to “[s]upport the General Land Office's preservation of historical documents important to Texas; support the Texas Historical Commission's placement of monuments to Texas units across the South; and generally assist in carrying out our mission.”

4.24 On December 21, 2009, the Texas SCV received a letter from Rebecca Davio, Director of the Vehicle Titles and Registration Division, denying the Texas SCV's application for a specialty license plate.

4.25 Following this denial, the Texas SCV made an open records request of the Department of Transportation .

4.26 From documents provided in response to this, the Texas SCV learned that the application had initially passed, based upon a simple majority of a quorum of the committee members on October 30, 2009. Initially five of the seven members voted, with a three to two vote in favor of approving the plate. This vote stood for over a month.

4.27 However, as emails among the committee members demonstrate, upon Ms. Davio's insistence that there be a re-vote based upon the "controversial" nature of the plate, the plate was denied as part of a 4 to 1 vote. This re-vote took place on December 10, 2009.

4.28 There appears to be no procedural basis for the committee ignoring the initial quorum vote.

4.29 Prior to the re-vote, on December 4, 2009, Ms. Davio sent an email to the Chairman of the newly-formed Department of Motor Vehicles Board, Mr. Vandergriff, explaining that they had received an application from the Texas SCV and were planning to re-vote, and further noted a lawsuit in Florida regarding a similar plate.

4.30 In 2009, the Texas Legislature amended the Transportation Code to provide that the Department of Motor Vehicles, rather than the Department of Transportation, was charged with issuing specialty license plates. The license plate function moved to the new Department of Motor Vehicles on November 1, 2009.

4.31 Further, the Legislature created a Department of Motor Vehicles Board and established some guidelines for the specialty plates. *See* Acts 2009, 81st Leg., ch. 933, § 2G.01, eff. Sept. 1, 2009.

4.32 Specifically, under Section 504.801(c) of the Transportation Code:

The department shall design each new specialty license plate in consultation with the sponsor, if any, that applied for creation of that specialty license plate. **The department may refuse to create a new specialty license plate if the design might be offensive to any member of the public**, if the nominated state agency does not consent to receipt of the funds derived from issuance of the license plate, if the uses identified for those funds might violate a statute or constitutional provision, or for any other reason established by rule. At the request of the sponsor, distribution of the license plate may be limited by the department. (emphasis added)

4.33 Since the Board has been charged with issuing specialty license plates, it has approved 89 of the specialty plates -- and rejected none. The Sons of the Confederate Veterans plate is the first, and only, to be rejected.

4.34 In October 27, 2010, the Texas SCV sought a reversal of the denial of their application from the Board.

4.35 The Board agreed to address the Texas SCV's application for a specialty plate and allow the full Board to decide.

4.36 The Texas SCV received notice on March 18, 2011 that their sample plate had been approved related to visibility and other technical requirements. Public comment was invited, and the plate was placed on the agenda for the April 14, 2011 Board meeting.

4.37 The design of plate that was approved is attached herein as **Exhibit A**.

4.38 Prior to that meeting, the official on-line public comments resulted in approximately 300 votes for the plate and only 6 against the plate. Thus, the official public comments were heavily in favor of the Texas SCV's application for a specialty plate.

4.39 At the April 14, 2011 meeting, the Board, missing one member, voted twice, with both votes resulting in a deadlock of 4-4.

4.40 The Board decided to move the vote of the Texas SCV plate to another meeting to address the deadlock.

4.41 The Texas SCV plate, sponsored by Commissioner Patterson, was not placed on the Board meeting agenda until November 10, 2011.⁵

4.42 Also on the Board meeting agenda, and also sponsored by Commissioner Patterson, was a license plate to honor the Buffalo Soldiers, post-Civil War black soldiers who fought in the Indian wars of the Southwest, and benefitting the Buffalo Soldiers National Museum in Houston.

⁵ One of the Board members who had voted for the Texas SCV plate passed away following the April 14, 2011 meeting. Governor Perry appointed a new member to the Board. This contributed to the delay of the vote for the Texas SCV plate.

4.43 Following commentary by both proponents and opponents, the Board rejected the SCV plate at the hearing by a 8-0 vote without any discussion.

4.44 At the same hearing, the Buffalo Soldiers plate, without any discussion, was approved by a 5-3 vote.

4.45 During the November 10, 2011 hearing, Chairman Vandergriff announced at the open hearing that the Board was denying the Texas SCV plate, and he referenced Section 504.801(c) of the Transportation Code, in which the “department may refuse to create a new specialty license plate if the design might be offensive to any member of the public.”

4.46 On December 1, 2011, Randy Elliston, the Director of the Vehicle Titles and Registration Division of the Texas Department of Motor Vehicles, sent a letter to Plaintiff Ray W. James explaining that the “Texas Department of Motor Vehicles agency review and Board action regarding the application for creation of a Sons of Confederate Veterans specialty license plate [had] been completed” and that the Board, “after hearing public testimony, voted to deny the Son’s of Confederate Veterans’ application for a new specialty plate.”

V. Cause of Action

5.1 Plaintiffs hereby reaffirm and re-allege each and every allegation made in contained in paragraphs 4.1-4.46 above.

5.2 Through the members of the Department of Motor Vehicles Board, the State of Texas has discriminated against the Texas SCV based on the ideas and message that the Texas SCV supports, in clear violation of the First Amendment.

5.3 The Board seeks to bar the Texas SCV from expressing their viewpoint while allowing all other groups to express their viewpoint: this type of restriction is exactly the type which the First Amendment is designed to erase.

5.4 The only guideline that the Transportation Code has to offer, which the Board referenced as its reason for rejecting the plate, is that the Board can reject a plate “if the design might be offensive to any member of the public...”

5.5 This, however, cannot be the standard. It is vague and indeterminable. Essentially, it is no standard at all to say that the Board can discriminate based upon a viewpoint if such speech is offensive to anyone. The First Amendment clearly protects controversial speech.

5.6 Additionally, even if simply being “offensive to any member of the public” was sufficient to allow for rejection, the State has approved numerous plates that are “offensive to any member of the public” – such as the “Texas State Rifle Association” plate. In fact, the plate approved the very same day as the Texas SCV plate was rejected – the Buffalo Soldier plate – is offensive to Native Americans because the all-black cavalry helped fight Native Americans in the Indian Wars from 1867-1888.⁶

5.7 In order to protect their rights, Plaintiffs file this suit against Defendants for preliminary and mandatory permanent injunctive relief pursuant to 42 U.S.C. §1983.

5.8 All conditions precedent to the bringing of this action have either occurred or been performed by Plaintiffs or waived by Defendant.

⁶ See Gary Scharrer, *Indian group objects to Buffalo Soldier plates*, HOUSTON CHRONICLE, available at <http://www.chron.com/news/houston-texas/article/Indian-group-takes-issue-with-Buffalo-Soldier-2293128.php>.
Original Complaint

5.9 The Texas SCV is entitled to a preliminary injunction and, following trial, a mandatory permanent injunction against the Defendants to compel them to grant the Texas SCV's application for a specialty plate and to implement such a plate.

5.10 Plaintiffs can demonstrate that they have suffered an irreparable injury, that they have no adequate remedy at law, that there is a likelihood of success on the merits, the balance of hardships favor the Plaintiffs, and injunctive relief would not adversely affect public policy or public interest.

5.11 The Texas SCV has retained the undersigned counsel to prosecute this action and has agreed to pay counsel a reasonable attorney's fee for the efforts herein. Defendants are liable for this fee as well as their costs under Section 1988 of Title 42 of the United States Code.

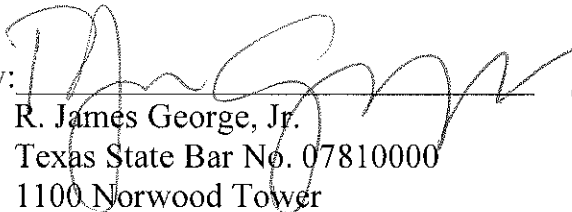
WHEREFORE Plaintiffs Texas Division, Sons of Confederate Veterans, Inc., request this Court:

- grant the Plaintiffs' requested injunctive relief, enjoining the Defendants to approve the Texas SCV's application for a specialty plate and implementing such a plate;
- grant to Plaintiffs their reasonable and necessary attorneys' fees and costs;
- and for such further relief to which Plaintiffs are entitled.

Respectfully submitted,

GEORGE & BROTHERS, L.L.P.

By:



R. James George, Jr.
Texas State Bar No. 07810000
1100 Norwood Tower
114 W. 7th Street
Austin, Texas 78701
Telephone: (512) 495-1400
Facsimile: (512) 499-0094
rjgeorge@georgeandbrothers.com

ATTORNEY FOR PLAINTIFF