

Judge Kiser Dissolves Injunction Allowing Confederate Flag on License Plates

Article By:

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On Friday, July 31, 2015, in Danville, **Virginia** -- the last capital of the Confederate States of America -- U.S. District Court Judge *Jackson Kiser* presided over a court hearing about whether the Commonwealth of Virginia could ban the display of the confederate flag on DMV-issued license plates.



The Sutherlin Mansion in Danville, Virginia, the last capital of the Confederacy, is now the Danville Museum of Fine Arts & History and is a short walk down Main Street from the US District Court.

Specifically, the question was whether the U.S. Supreme Court's recent decision allowing Texas to ban the confederate flag from its license plates in Texas also applied to Virginia. Pursuant to an older 2001 decision from the Fourth Circuit, Virginia was prohibited from disallowing an image of the confederate flag on vanity license plates for the Sons of Confederate Veterans. The Fourth Circuit had held that Virginia's rule was an impermissible content-based restriction (viewpoint discrimination) under the First Amendment. Since then, nearly 1602 Sons of Confederate Veterans license plates have been issued for cars and motorcycles.

In March 2015, however, the Supreme Court held that Texas's specialty license plate design constitutes government speech, and therefore content-based restrictions on the design and message

of the license plates did not run afoul of the First Amendment. The majority opinion explained that states can use license plate slogans to urge action, promote tourism and tout local industries, and that in doing so, the state can choose to promote some slogans, images and messages, but not others. The Court compared messages on vanity license plates to message-conveying monuments in public parks.

Given this ruling, the Commonwealth of Virginia asked Judge Kiser to dissolve the 2001 injunction that prohibited it from disallowing the confederate flag on its license plates. In his ruling from the bench, Judge Kiser agreed that the recent Supreme Court case effectively overruled the prior Fourth Circuit decision, and thus the injunction would be dissolved when he issues a written order. Judge Kiser rejected the Sons of Confederate Veterans' argument that the process for obtaining a vanity plate in Virginia was so different from Texas that the US Supreme Court case should not apply. A question that still needs to be answered, however, is what will happen to the existing Sons of Confederate Veterans license plates that have already been issued. Judge Kiser's written ruling is expected to address whether his decision applies just to new plates or also retroactively to include the existing plates.

Attorney General Mark Herring said in a statement: "This ruling will allow Virginia to remove a symbol of oppression and injustice from public display on its license plates. Virginia state government does not have to and will not endorse such a divisive symbol. I appreciate Gov. McAuliffe's leadership in calling for the removal of the flag and those on my team who moved quickly to get it done."

Personally, I think that not only was Judge Kiser's ruling the right decision but it was the only decision possible given the Supreme Court's prior ruling in the Texas case.

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