

Written by
TERRI SANGINITI
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ACLU intervenes in DelDOT case

Suspension of employee for displaying Confederate flag violates rights, it says

The American Civil Liberties of Delaware is supporting the First Amendment rights of a DelDOT employee suspended by the agency because he displays a Confederate flag on a decorative license plate on the front of his personal vehicle.

Delaware AFSCME Council 81, the union that represents 4,000 state, county and municipal employees, contacted the ACLU for support on behalf of Tom Drummond -- and all DelDOT employees -- in the wake of the agency's disciplinary action last week.

According to ACLU Legal Director Richard Morse, Drummond first received a letter from DelDOT on March 12 notifying him that failure to remove the inappropriate plate could result in discipline because it violates state policy.

A week later, Drummond received a written reprimand from DelDOT stating that if he continued to drive his vehicle with the plate on state property, it could result in progressive discipline, up to termination.

On March 20, he was given a one-day suspension, which he has not yet served.

Following that, the union told Drummond to cover the plate while on DelDOT property to avoid further action by the agency.

Drummond, 58, who belongs to Local 879 and is being represented by AFSCME at a grievance hearing with DelDOT on Wednesday, declined to be interviewed.

The decorative plate reading "Red Neck" with part of a Confederate battle flag in the background has been displayed on his vehicle for 17 years.

Drummond, who has been employed as an equipment operator since 2008, has had the plate on his truck since being hired and has parked it in the DelDOT lot with no previous problems, a union representative said.

In a March 26 letter to Shailen Bhatt, secretary of the Department of Transportation, the ACLU informed the state that "this is not a constitutionally permissible basis for the government to discipline an employee."

"Americans do not lose their right to free speech when they become government employees," Morse said.

DelDOT spokesman Geoff Sundstrom said the action against Drummond was prompted by an employee's complaint that the plate was "a form of harassment."

"Our decisions were motivated solely by this concern," Sundstrom said. "As an employer, our aim is to maintain a workplace that is productive and as free from acrimony as possible. We will

review the ACLU's letter with our legal counsel and take whatever additional steps may be necessary."

Morse said, however, that the display of a Confederate flag does not rise to the level of harassment.

"It is also important to remember that the First Amendment exists to protect offensive speech, not the words, symbols or flags that people find agreeable," he said.

He added there are legal precedents on this issue from several federal courts to support the First Amendment protection of free speech.

"They have repeatedly found that flags and other symbols, including Confederate flag license plates, are entitled to First Amendment protections because they are variants of free speech," Morse said. "In a 2001 Fourth Circuit opinion, they went so far as to say: 'Flags, especially flags of a political sort, enjoy an honored position in the First Amendment hierarchy.' "

AFSCME Executive Director Michael Begatto could not be reached for comment.

In the letter to DeIDOT, however, AFSCME stated that it "was not endorsing or rejecting the content of Mr. Drummond's speech. It was standing up for the free speech rights of DeIDOT employees."

Contact Terri Sanginiti at 324-2771 or tsanginiti@delawareonline.com.