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ACLU-DE defends display of Confederate flag license plate

The American Civil Liberties of Delaware contacted the Delaware Department of Transportation (DelDOT) regarding disciplinary action it took against an employee because he displayed a Confederate flag license plate on his personal vehicle while parked at work. The ACLU of Delaware informed the state that this is not a constitutionally permissible basis for the government to discipline an employee.

ACLU of Delaware was originally contacted by Delaware AFSCME on behalf of the employee, Tom Drummond. According to the DelDOT manager who reprimanded and suspended Drummond, the license plate was “inappropriate” and a violation of state policy.

Several federal courts have addressed this precise issue. They have repeatedly found that flags and other symbols, including Confederate Flag license plates, are entitled to First Amendment protection because they are variants of free speech. 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.”

Letters from DelDOT to Drummond refer to the state’s harassment policy. However, the ACLU maintains that this policy does not override free speech rights. Americans do not lose their right to free speech when they become government employees.

“It is understandable that some people are offended by the display of a Confederate flag, but it does not rise to the level of harassment,” said Richard Morse, ACLU-DE legal director. “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.”