*Maryland-National Capital Park and Planning Commission v. American Humanist Association*

To Be Argued: February 27, 2018

Background

The Establishment Clause of the First Amendment prohibits state or federal governments from setting up churches, passing laws aiding one or all religions, or favoring one religion over another. The First Amendment is said by some to create a “wall of separation between church and state”—but the wall is not complete. Religious institutions are aided by government in many ways, including fire and police protection and an exemption from paying taxes. In addition, the First Amendment’s Free Exercise Clause protects religious expression and practice. Taken together, the First Amendment prohibits endorsement of religion and protects against government interference with religious beliefs and practices. Some say the government must be neutral when it comes to religion. But as many court cases have shown, regulating how government and religion interact in the U.S. has been very difficult. The Supreme Court has used a variety of “tests” to analyze Establishment Clause cases. These tests were created by and used in some of the most important precedents *(see Precedents section)*.

Facts

Bladensburg, Maryland, is home to a 93-year-old, 40-foot-tall cross that is located prominently in the center of a traffic circle where several major roads meet. The cross is known as the Bladensburg Cross or the Peace Cross. It serves as a memorial for fallen World War I soldiers, including 49 from Prince George’s County, Maryland, and it bears a plaque listing the names of the soldiers on one side. The base of the monument is inscribed with the words “valor,” “endurance,” “courage,” and “devotion.” The monument is located in Veteran Memorial Park, which has four other memorials honoring veterans of several wars and two soldier cut-outs (each approximately five-feet-tall) situated atop poles. The other monuments are located at least 200 feet away from the cross and across the street from the traffic circle, where the cross sits alone *(see attachment for a photo of the cross)*. The first of these monuments commemorating fallen soldiers from World War II was approved in the 1940s (20 years after the cross). The most recent monument was added in 2014, after litigation regarding the cross began.

When construction of the monument began in 1918, the city of Bladensburg owned the land. In 1961, ownership was transferred to the Maryland-National Capital Park and Planning Commission. The Commission is part of Maryland’s state government. Since 1961, the Commission has spent approximately $117,000 on repairs and maintenance of the cross. The monument is aging and weathered, so an additional $100,000 was reserved for renovation costs in 2008.

Three non-Christian county residents who belong to the American Humanist Association sued the Maryland government agency in federal court. They argue that the cross monument is offensive to them and is a government endorsement of religion because the Latin cross is a clearly identifiable symbol of Christianity. The federal trial court ruled in favor of the government and against the residents. Then the Court of Appeals reversed, ruling that the government’s display and maintenance of the cross did violate the residents’ First Amendment rights. The government appealed that decision, and the Supreme Court agreed to hear the case.

Issue

Does a local government’s display and maintenance of a 40-foot tall Latin cross on public property, established in memory of fallen World War I soldiers, violate the First Amendment’s Establishment Clause?

Constitutional Amendments and Supreme Court Precedents

* **First Amendment to the U.S. Constitution**

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

* ***Lemon v. Kurtzman* (1971)**

In this case, the Supreme Court set out a three-pronged test, referred to as the “Lemon Test.” Each part must be satisfied for governmental action to be permissible under the Establishment Clause. 1) The challenged law or official action must have a predominantly *secular* (nonreligious) *purpose*. 2) The primary *effect* of the law or action must be neither to advance nor to inhibit religion. 3) The operation of the law or action must not foster excessive *entanglement* of government with religion. If any of those requirements is not met, the law or action violates the Establishment Clause.

* ***County of Allegheny v. American Civil Liberties Union* (1989)**

In this case, the Supreme Court ruled that a nativity display in a county courthouse was unconstitutional. The nativity scene was displayed alone and prominently said “Glory to God for the birth of Jesus Christ.” The Court decided that the nativity display affiliated the government with one specific faith (Christianity) and had the effect of advancing religion. The Court said that “history cannot legitimate practices that demonstrate the government’s allegiance to a particular sect or creed.”

* ***Van Orden v. Perry* and *McCreary County v. ACLU of Kentucky* (2005)**

These two cases were both decided on the same day. Each opinion was 5–4. In *Van Orden,* Texas was sued for displaying a Ten Commandments monument on the grounds of the state capitol, along with 38 other historical monuments. The Court ruled that, in the context in which it was displayed, the monument was part of the nation’s tradition of recognizing the Ten Commandments’ historical meaning, and, therefore, its primary purpose was not religious. According to the majority opinion, the display served a valid secular purpose and would not appear to a reasonable observer to represent a government endorsement of religion.

“Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause,” according to the opinion. Rather, the public considered the religious aspects of the tablets’ message a part of a broader moral and historical message reflective of the nation’s cultural heritage.

In *McCreary,* the American Civil Liberties Union (ACLU) sued three Kentucky counties for displaying framed images of the Ten Commandments in schools and courthouses. The ACLU argued that the displays were violations of the Establishment Clause. In another 5–4 decision, but seemingly at odds with the *Van Orden* decision, the Supreme Court found that these displays did violate the Establishment Clause noting that the displays had the purpose of advancing religion. The Court considered that a reasonable observer of these displays would conclude that the government was endorsing religion.

* ***Town of Greece v. Galloway* (2014)**

In this case, the Supreme Court ruled that opening a town meeting with a prayer fit within an established tradition of prayers to open sessions of legislatures. Because the United States has a long history of prayer before legislative meetings, the Court found that the prayers in this case were not designed to coerce a particular religious belief or practice. The Court reasoned that a reasonable observer would not feel pressured to join or to violate his or her own beliefs by participating. Simply being offended by the prayer does not amount to coercion.

Arguments for Maryland-National Capital Park and Planning Commission (petitioner)

* The purpose of the cross—to commemorate soldiers who died in World War I—is clearly not religious, and the presence of the cross does not have the effect of advancing any particular religion.
* Display of the cross in a memorial setting, like the prayer in *Town of Greece* in a legislative setting, is part of our nation’s tradition and does not convey a message of endorsement of religion.
* This display existed for almost 100 years before there was a complaint about it, which suggests that a reasonable observer would not be offended by it.
* While the Establishment Clause prohibits government from setting up or advancing religion, the First Amendment also requires that government not be hostile toward religion.
* A decision for the American Humanist Association would call into question thousands of monuments, including two World War I memorials in Arlington National Cemetery.
* This use of religious imagery is consistent with the nation’s historical traditions and does not coerce religious belief or observance by non-adherents. Crosses were used as grave markers for soldiers buried near battlefields during WWI.

Arguments for the American Humanist Association (respondent)

* According to the Court of Appeals in this case, the “Latin cross is the ‘preeminent symbol of Christianity,’ and the Court ‘simply cannot ignore the fact that for thousands of years the Latin cross has represented Christianity.’” The religious message of endorsement is unmistakable.
* Maryland has endorsed religion by spending taxpayer funds to maintain the memorial and by setting aside an additional appropriation for its renovation.
* The size and prominence of the cross at a major intersection, where its viewing is unavoidable, cancels out the nearby presence of other non-religious messages that are part of Veteran Memorial Park.
* Christian prayers were said and Christian hymns sung at the display’s dedication, at a 50th anniversary ceremony, and at a recent rededication ceremony.
* The Bladensburg Cross is not a display that *includes* a religious symbol. The display *itself* is a religious symbol, specifically a symbol of Christianity. The Court of Appeals found a First Amendment violation precisely “because the Commission is displaying the hallmark symbol of Christianity in a manner that dominates its surroundings and not only overwhelms all other monuments at the park, but also excludes all other religious tenets.”
* When the Maryland-National Park and Planning Commission acquired the land containing the cross, it did so for the purposes of “the future repair and maintenance of the monument.” Thus, the Commission owns the land not in spite of the cross, but because of it.
* The American Humanist Association members do not wish to see the cross torn down; they simply want it removed to private property or modified into a non-religious memorial (such as a slab or obelisk).
* The petitioners claim there are “hundreds” of war memorials that include a cross. Yet, they have identified only a handful of freestanding cross monuments, and all but a few are in cemeteries, museums, or other multi-faith spaces. They cite two smaller cross monuments in Arlington National Cemetery; however, the crosses are set amidst approximately 200 other monuments and 26 memorials and are surrounded by a diverse array of religious symbols.

**Photo Credit:** Cathy Ruffing

