The Establishment Clause Does Not Ban Religious Symbols on Public Land


Ted Cruz and Kelly Shackelford represent the Veterans of Foreign Wars, the American Legion, the Military Order of the Purple Heart, and the American Ex-Prisoners of War. They wrote amici curiae, friend of the court, briefs in Salazar v. Buono, a case before the US Supreme Court on the constitutionality of a war memorial cross on public land in the Mojave Desert.

To achieve their goal of removing all religious symbols from public land, activists misinterpret the US Constitution. The First Amendment prohibits the government from favoring one religion over another by prohibiting the establishment of a national religion. The Constitution, however, does not say the government must be hostile to religion or faith. Indeed, former US Supreme Court Chief Justice Warren Burger held that opening a legislative session with a prayer is not the establishment of a religion but a recognition of beliefs widely held among Americans. Clearly war memorial crosses are not meant to establish a national religion. They allow Americans to reflect on the sacrifice of those who died to preserve their rights.

At Arlington National Cemetery near Washington, D.C., the Argonne Cross was erected to honor our fallen World War I soldiers. If you stand at the foot of that memorial, you cannot help but be moved by the sacrifices so many brave souls have made for our nation.

You will similarly feel deep admiration if you cast your eyes on row upon row of white crosses and Stars of David at the Meuse-Argonne American Cemetery and Memorial in France. Both fulfill the central purpose of our war memorials: They cause us to reflect on the sacrifices of American patriots.

Today, the U.S. Supreme Court will hear oral arguments in Salazar v. Buono, a case that will determine the fate of another moving monument to our fallen soldiers—a 75-year-old veterans’ memorial located on public land in the vast Mojave National Preserve in San Bernardino County, Calif.

The Mojave Desert Veterans Memorial, a seven-foot metal cross, was erected in 1934 by World War I veterans to honor their fallen brethren. In 2001, the American Civil Liberties Union (ACLU) sued to have the memorial taken down. The reason? The ACLU claims that the mere presence of the cross within the 1.6 million acre national preserve runs afoul of the Constitution, because it is effectively a religious symbol.

Judge Robert J. Timlin of the U.S. District Court for the Central District of California agreed with that claim, and ordered that the cross be covered up while the case was on appeal. So now a memorial dedicated to those who fought tyranny and oppression is hidden from view by a plywood box.

That no religious symbol can be allowed on public land ... is contrary to ... how the Supreme Court has long interpreted the First Amendment's prohibition on the establishment of a religion.
A Disturbing Pattern

This case is part of a disturbing pattern. Like lawsuits seeking to stop the Pledge of Allegiance from being recited each morning in our public schools or to remove "In God We Trust" from our currency, the ACLU's argument in *Salazar v. Buono* is based on a misconception of the Constitution—that the government must be hostile to religion.

Far more is at stake than a single memorial. If the Supreme Court allows this cross to be destroyed, it could presage the destruction of thousands of similar memorials nationwide, inflicting sorrow on millions of Americans, especially veterans and their families.

The theory being advanced by the ACLU is that no religious symbol can be allowed on public land. That is a radical notion that is contrary to the text of the Constitution, to the original understanding of the Framers, and to how the Supreme Court has long interpreted the First Amendment's prohibition on the establishment of a religion.

The Constitution prohibits government from favoring one religion over another, but it does not compel hostility to faith. For example, the Supreme Court ruled in *Marsh v. Chambers* (1983) that it was constitutional to open a legislative session with a prayer. Chief Justice Warren Burger, writing for the majority, explained:

"To invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country."

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Likewise, in *Lynch v. Donnelly* (1984) the Court observed that "[o]ur history is replete with official references to the value and invocation of Divine guidance."

The Mojave Desert Veterans Memorial, like other war memorials, reflects the respect and gratitude due our honored dead. The men and women who have died defending our country gave their last measure of devotion to preserve our right to free speech and religious expression. They deserve our honor and admiration—not a plywood box marring their memory.

War memorials embody the very best traditions of our nation. In 1787, the U.S. Constitution was written to "secure the Blessings of Liberty to ourselves and our Posterity." With the case it will hear today, the Supreme Court has an opportunity to preserve this promise.

Further Readings

Books


• Donald L. Drakeman *Church, State, and Original Intent.* New York: Cambridge University Press, 2010.


**Periodicals and Internet Sources**


• Sandhya Bathija "A Cross, the Court and the Constitution," *Church & State,* September 2009.


• Will Connaghan "What in God's Name Is Happening?" *Daily Record* (St. Louis, MO), December 15, 2006.


Liz F. Kay "'Holiday' Trappings: Common Sense Works," The Sun (Baltimore, MD), December 17, 2006.


Footnotes
1. On April 28, 2010, in Salazar v. Buono, a 5-4 decision, the Supreme Court overturned the lower court ruling that ordered the removal of the World War I memorial cross located in the Mojave National Preserve.

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