

U.S. Supreme Court hears arguments in case about war memorial cross

The Bladensburg Peace Cross, which bears the names of 49 men who died in World War I, is on land now owned by a Maryland government commission.

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To Steven Lowe, who drives past it routinely, the 40-foot concrete structure in the middle of a Maryland traffic circle plainly is a Christian cross.

To Mary Ann LaQuay, who also lives nearby, the Bladensburg Peace Cross which bears the name of her late uncle, Thomas N. Fenwick, and 48 other men who died in World War I is “a symbol for remembrance,” she said. “That to me is where my uncle is buried, even though his body is not there; his spirit is there with all these other men.”

Erected by the American Legion and dedicated in 1925, the memorial was meant, according to local lore, to evoke the crosses that stood over the local men’s graves in Europe.

Now the cross is the center of a lawsuit filed by the American Humanist Association arguing that the monument is a religious symbol and that it is unconstitutional to have it on government property.

Lowe, a plaintiff in the case, advocates altering the cross to “turn it into a pillar,” though he admits that option is “rather drastic.” He also suggested that it could be moved to private property or removed altogether.

LaQuay sees it as “a sacrilege to do anything to it, to move it, to change it.”

A district court ruled against the humanists in 2015, saying ownership of the cross by the Maryland-National Capital Park and Planning Commission, which acquired it when it took over the traffic circle in 1961, is appropriate because it maintains the highway median.

The Fourth U.S. Circuit Court of Appeals reversed the lower court's decision in 2017, ruling that the monument had "the primary effect of endorsing religion and excessively entangles the government in religion."

The Supreme Court heard arguments in the case on February 27, with a lawyer representing the commission arguing that there is precedence for religious symbols to take on independent secular meaning.

"Look above you," Neal Katyal said to the justices, referring to a frieze that includes a depiction of Moses carrying the Commandments.

In 2005, the court issued split decisions on cases involving Ten Commandments displays.

"The court's decisions and doctrines having to do with religious symbols and displays are notoriously unpredictable and manipulable," said Richard Garnett, founding director of the Program on Church, State, and Society at the University of Notre Dame law school. "For more than three decades, justices' opinions in these cases have consisted mainly of speculation about the messages various symbols convey to imaginary observers."

Many do not expect the high court to rule against the state commission that pays for the cross's upkeep. Earlier in February, in a 5-4 ruling, the majority denied the request of a Muslim inmate on death row and upheld an Alabama prison policy that allowed only for a Christian chaplain to be present at an execution.

Jeremy Dys, a lawyer representing the American Legion, is concerned that if the Supreme Court declares the Peace Cross unconstitutional, it could lead to calls for the removal of other monuments, such as two World War I memorials in Arlington National Cemetery, the Argonne Cross and the Canadian Cross of Sacrifice.

"If the Fourth Circuit decision is allowed to stand, it puts at jeopardy memorials just like it all over the country," he said.

Monica Miller, senior counsel for the American Humanist Association, said a ruling for the Bladensburg Peace Cross would not doom other cross-shaped monuments. She pointed to California cases involving crosses on Mount Soledad and in the Mojave National Preserve, in which the land underneath the memorials was transferred to private ownership.

“The Supreme Court has been very clear that when it evaluates religious displays it does so in the context of that one display,” she said. Of all the cases where memorial crosses were found to be unconstitutional, she could only confirm that one—a 35-year-old, 37-foot cross at an army barracks in Hawaii—was dismantled.

Religious groups filed amicus briefs on both sides of the case. Some argued that a nearly century-old memorial at a busy intersection is not a declared government preference for Christianity. Others saw it as offensive to people of other religions who have died in U.S. wars.

“The cross is not a universal symbol of sacrifice,” said Holly Hollman, general counsel for the Baptist Joint Committee for Religious Liberty, in a statement.

The Baptist committee was joined in an amicus brief by the American Jewish Committee, the Central Conference of American Rabbis, the Evangelical Lutheran Church in America, the General Synod of the United Church of Christ, and the stated clerk of the Presbyterian Church (U.S.A.).

The brief asks the court to reject arguments that could allow government officials to erect additional crosses, arguing, “If the Bladensburg cross is allowed to remain, the sole reason should be that it is grandfathered.”

FOLLOWING UP (Updated July 9): The US Supreme Court [ruled 7-2 that a cross-shaped war memorial is constitutional](#).

“For nearly a century, the Bladensburg Cross has expressed the community’s grief at the loss of the young men who perished,” Justice Samuel Alito wrote for the majority in the June 20 decision. Removing or radically altering it now would be seen as hostile to religion rather than neutral. The American Humanist Association filed the lawsuit against the 40-foot-tall cross, which stands in the middle of a Maryland traffic circle and has been maintained by the state of Maryland since 1961. A plaintiff in the case suggested turning the cross into a pillar or moving it to private property.

Justices Ruth Bader Ginsburg and Sonia Sotomayor dissented, with Ginsburg writing, “The Latin cross is the foremost symbol of the Christian faith, . . . By maintaining the Peace Cross on a public highway, the Commission elevates Christianity over other faiths, and religion over nonreligion.”

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