

# Court to consider case involving cross on federal land

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WASHINGTON (ABP)—The Supreme Court has agreed to hear a case that could lead to the first major church-state decision under the panel's current makeup.

The justices announced they would hear *Salazar v. Buono*, a case that involves a cross—a predecessor of which was first erected as a World War I memorial in 1934—standing on government-owned land in California's Mojave National Preserve.

The current version was built of painted metal pipes by a local resident in 1998. The next year the National Park Service, which oversees the land, denied an application to build a Buddhist shrine near the cross.

The agency studied the history of the monument and, determining that it did not qualify as a historic landmark, announced plans to remove it. Congress intervened with a series of amendments to spending bills attempting to preserve the cross.

In 2001 Frank Buono, a former Park Service employee who once worked at the preserve, filed suit with the help of the American Civil Liberties Union. They claimed that the cross violated the Constitution's ban on government establishment of religion.

A series of federal court decisions ruled against both the cross and the government's attempts to preserve it through legislative maneuvers. In 2007, the 9th U.S. Circuit Court of Appeals ruled against a 2003 law that ordered the government to give the parcel of land the cross sits on to the Veterans of Foreign Wars in exchange for a privately owned plot elsewhere

in the park.

“We previously held that the presence of the cross in the preserve violates the Establishment Clause” of the First Amendment, wrote Judge Margaret McKeown in that decision. “We also concluded that a reasonable observer aware of the history of the cross would know of the government’s attempts to preserve it and the denial of access to other religious symbols.”

McKeown said even an observer who didn’t know the monument’s history would assume that it was a government symbol, because the vast majority of land in the area is owned by the government—even if a private organization actually owned the small plot on which the cross stands.

“Under the statutory dictates and terms that presently stand, carving out a tiny parcel of property in the midst of this vast preserve—like a donut hole with the cross atop it—will do nothing to minimize the impermissible governmental endorsement.”

Supporters of the cross—including the VFW, the American Legion and other veterans’ groups—argue in a brief that a decision allowing removal of the cross would endanger other religious symbols on federal property, such as grave markers in national cemeteries.

The last time the court handed down decisions involving religious displays on government property was in 2005. That was before Chief Justice John Roberts took over for the late William Rehnquist and Justice Samuel Alito replaced retired Justice Sandra Day O’Connor.

O’Connor—considered a moderate on church-state issues—voted against Ten Commandments displays in Kentucky and Texas. Alito is likely to be more open to such monuments on public property.

But the case may turn on a different issue—whether Buono has legal standing to assert the case in the first place. The high court’s 2007 decision

in *Hein v. Freedom From Religion Foundation* significantly limited most potential plaintiffs' ability to sue over government endorsements of religion.

The justices won't hear the Salazar case until their 2009-2010 session begins in October. While President Bush's administration defended the cross, President Obama's administration may have a view of the First Amendment more in line with the 9th Circuit's. They could withdraw the appeal altogether or simply choose not to defend vigorously Congress' attempts to preserve the cross.