

Supreme Court says WWI cross can stand on government land

June 20, 2019

WASHINGTON—The U.S. Supreme Court ruled a 40-foot cross erected as a World War I memorial can remain on government property in Bladensburg, Md.

In a 7-2 decision, the Supreme Court reversed a lower court decision in [The American Legion v. American Humanist Association](#).

Holly Hollman, general counsel for the [Baptist Joint Committee for Religious Liberty](#), noted the Supreme Court's decision "relies heavily on the particular history of that memorial."

She further observed, "The splintered decision shows how difficult it is to reconcile the government's promise of religious liberty for all while upholding a massive Latin cross on government land."

Cross as secular symbol?

The Fourth Circuit U.S. Court of Appeals had ruled the "Peace Cross"—dedicated in 1925 to honor local veterans who died in World War I—violated the Establishment of Religion Clause of the First Amendment. However, Chief Judge Roger Gregory filed a dissenting opinion, asserting the cross could be interpreted in a nonreligious way as a war memorial.

The Baptist Joint Committee joined in a friend-of-the-court [brief](#) that took issue with Gregory's assertion.



Holly Hollman (center), general counsel at the Baptist Joint Committee for Religious Liberty, responds to questions from Nina Totenberg (left) of National Public Radio and other reporters after the U.S. Supreme Court heard oral arguments involving the constitutionality of a 40-foot cross on government property. Also pictured are Amanda Tyler (2nd from left), BJC executive director, and Jennifer Hawks (right), BJC associate general counsel. (Photo/Baptist Joint Committee)

“Our brief makes plain what should go without saying: The cross is the most recognizable symbol of the central promise of Christianity,” Hollman said in February, when the court heard oral arguments on the case.

“While Christians commonly display the cross to promote Christian teachings as revealed in Scripture, the government should not. The cross is a symbol that is specific to Christianity, and the government’s efforts to claim otherwise are hollow and offensive.”

The Southern Baptist Convention’s Ethics & Religious Liberty Commission signed onto a [brief](#) arguing the presence of the Bladensburg Cross does not violate the First Amendment’s Establishment Clause. The brief asserted questions of establishment “should be discerned by looking to historical practices and understandings at or near the founding period.”

“A government action should be sustained against an Establishment Clause challenge unless history confirms that the founding generation understood such an action as an establishment of religion outright—such as the official formation of a national church—or as a legal attribute of a religious establishment—such as a law intruding into a church’s ecclesiastical affairs,” the ERLC brief argued.

Focus on historical significance

In overturning the Fourth Circuit decision, the Supreme Court did not completely annul the so-called “Lemon test.” Based on the court’s 1972 *Lemon v. Kurtzman* opinion, the three-pronged test evaluates whether government action violates the Establishment Clause of the First Amendment. To pass muster, it must have a secular purpose, not primarily promote or restrict religion, and not create “excessive entanglement” with religion.

“After our earlier victory, our opponents took this case to the post-Kennedy Supreme Court hoping for a complete upheaval of the separation of church and state,” said Monica Miller, senior counsel at the American Humanist Association. “Fortunately, the Lemon test and decades of precedent have not been overruled in the vast majority of relevant instances.”

Instead, the Supreme Court’s majority focused on historical significance and avoiding the appearance of hostility toward religion.

“Retaining established, religiously expressive monuments ... is quite

different from erecting or adopting new ones,” [Associate Justice Samuel Alito wrote](#).

“The fact that the cross is undoubtedly a Christian symbol should not blind one to everything else that the Bladensburg Cross has come to represent: a symbolic resting place for ancestors who never returned home, a place for the community to gather and honor all veterans and their sacrifices for this nation, and a historical landmark,” Alito wrote. “For many, destroying or defacing the Cross would not be neutral and would not further the ideals of respect and tolerance embodied in the First Amendment.”

Michael Carvin, lead counsel for the American Legion, praised the decision as a “historic victory for the First Amendment.

“The decision simply affirms the historic understanding of the First Amendment that allows government to acknowledge the value and importance of religion,” Carvin said.

The Baptist Joint Committee “is pleased that the court did not accept the extreme arguments put forth by the government and its allies,” Hollman said.

“The court did not abandon the First Amendment’s promise of neutrality among faiths. It also specifically acknowledged the cross as a Christian symbol, not a universal symbol of sacrifice,” she said. “Important for our pluralistic society, the decision does not support the constitutionality of Christian-only monuments sponsored by government today.”