

Guest Opinion: Supreme Court made special case of Bladensburg Cross. Let's keep it that way

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WASHINGTON (RNS)—In last week's decision in [*The American Legion vs. American Humanist Association*](#), the U.S. Supreme Court held that a free-standing, 40-foot cross on government land in Bladensburg, Md., did not violate the First Amendment's "no establishment" clause, reversing the lower court's ruling below.

Seven justices agreed with that judgment, with only Justices Ruth Bader Ginsburg and Sonia Sotomayor dissenting. But the ruling was splintered and the decision more limited than the vote count suggests.

Rationale leading to Bladensburg Cross decision

In upholding the argument that the monument should remain, the majority opinion written by Justice Samuel Alito focused on its specific history and its context as a World War I memorial. The opinion emphasized that this cross was originally dedicated to 49 individuals from the local community who were killed in the war.

According to the majority, the "plain Latin cross ... took on a new meaning after World War I," as a "'central symbol' of the conflict." In several places throughout his opinion, Alito emphasized the monument's old age, having

been erected in 1925, and how those 94 years changed both its purpose and the message it conveyed.

Perhaps most important to the outcome of this case, the court worried about the divisive impact to remove or alter the monument, “especially to the local community for which it has taken on particular meaning.”

In their decision, however, the court opted against some of the extreme arguments put forth by the government and its allies that would have had more far-reaching consequences. The court rejected an approach that would ignore concern for government neutrality between different faiths and require government coercion.

Sticking to the facts of this particular memorial and divisive consequences of its potential removal, Alito wrote that the facts at hand were “quite different from erecting or adopting new” monuments.

The court also avoided sweeping arguments that the cross lacked religious content and had become a universal symbol of sacrifice. Thankfully, the court rejected this offensive argument by acknowledging the obvious—that the cross is a Christian symbol, albeit one in its view that had taken on additional meaning in this specific instance.

Dissenting opinion in Bladensburg Cross case

The dissent emphasized the religious nature of the cross. Quoting from the [Baptist Joint Committee’s friend-of-the-court brief](#) in the first of several passages, Justice Ginsburg described the exclusive meaning of the cross: “The Latin cross is the foremost symbol of the Christian faith, embodying the ‘central theological claim of Christianity: that the son of God died on the cross, that he rose from the dead, and that his death and resurrection

offer the possibility of eternal life.”

Ginsburg wrote how the majority’s ruling eroded the First Amendment’s promise of neutrality among faiths and between religion and non-religion and sent as well a “message of exclusion” to the estimated 30 percent of Americans who are not Christian.

Majority opinion focuses on neutrality

Though they disagreed with Ginsburg’s conclusion on the effect of the Bladensburg Cross, the justices in the majority continued to emphasize neutrality principles in their opinions. Alito said the First Amendment’s religion clauses “aim to foster a society in which people of all beliefs can live together harmoniously.”

Justice Brett Kavanaugh repeated a statement he had made during his confirmation hearings: “All citizens are equally American, no matter what religion they are, or if they have no religion at all.”

Justice Elena Kagan voiced support for “this Nation’s pluralism, and the values of neutrality and inclusion that First Amendment demands.” Justice Stephen Breyer reinforced “the basic purposes that the Religion Clauses were meant to serve: assuring religious liberty and tolerance for all, avoiding religiously based social conflict, and maintaining that separation of church and state that allows each to flourish in its ‘separate sphere.’”

Religious liberty concerns raised by Bladensburg Cross case

For many court watchers, including BJC, it is difficult to reconcile the promise of religious liberty for all with the constitutionality of a massive Latin cross sponsored by the government. One takeaway from this case

could be that an unconstitutional establishment can become permissible if it stays up long enough without objection.

It will take citizens committed to the principle that there are no second-class faiths in this country to remain vigilant to make sure that the Bladensburg Cross remains a relic of the past and not an example for the future.

Amanda Tyler is executive director of the Baptist Joint Committee for Religious Liberty. The views expressed are those of the author and the BJC.

EDITOR'S NOTE: Tyler wrote: "Perhaps most important to the outcome of this case, the court worried about the divisive impact to remove or alter the monument, 'especially to the local community for which it has taken on particular meaning.'" Some may see this rationale as opening the door for maintaining other monuments, even those without an explicitly religious connection or purpose.

This question was asked of the BJC, who responded by email, stating: "Because of the specific way religion is protected in the Constitution, religious liberty law is a niche and does not typically play a major role in shaping other areas of the law. The Establishment Clause prevents the government from promoting religion but also from denigrating it. The government should remain neutral toward religion. On no other subject is there a constitutional requirement that the government not take a side in a debate. ... The Court felt that taking down a nearly 100-year-old cross monument could be hostile to Christians. This line of reasoning would not apply to secular monuments."