

Maryland Cross Case



Religious Symbols

- Question Presented: Does a large cross on public property as part of a war memorial violate the First Amendment's establishment clause, which bars the government from passing laws "respecting an establishment of religion?"

The Tests

- Lemon Test – display is unconstitutional if:
 - It was erected for a religious purpose OR
 - It has the effect of advancing religion
- Endorsement Test – adaptation of Lemon. Display is unconstitutional if:
 - It was erected for a religious purpose OR
 - If a reasonable observer views the display as making non-believers feel like outsiders.
- Coercion Test
 - Simply asks whether a display is coercing someone to believe a certain way.
 - Has been used in prayer cases, but never by a majority of Justices in a display case.

Why Two Petitioners?

- The property on which the cross stands is currently owned by the Maryland-National Capital Park and Planning Commission.
- The cross was originally erected with the help of the American Legion on private property.
 - The Legion intervened in the case
 - Courts can allow third parties to join a case as intervenors if they can show a sufficient interest in the outcome of the case.
- Two different arguments:
 - Commission – cross is OK under current tests
 - Legion – new test is needed

The Precedent

- **Lynch v. Donnelly**
 - Court upholds religious display that is part of secular display.
- **County of Allegheny v. ACLU**
 - Court strikes down stand alone religious display, upholds religious display that is part of a larger secular display.
- **Van Orden v. Perry**
 - Court upholds Ten Commandments monument placed on state property. 4 Justices advocate use of coercion test, one justice believes the display would not be viewed by reasonable observer as endorsing religion based on how long it has been on the property.

Additional Cases

- There are three additional cases that the parties spend time talking about:
 - Salazar v. Buono – Court allows stand alone cross to remain in desert park, but primarily because the land was no longer owned by the government.
 - Capitol Square Review Bd. v. Pinette – Court allows temporary stand alone cross to remain in park because government had allowed other temporary symbols to be erected there.
 - Town of Greece v. Galloway – Court allows city council to open its meetings with a prayer because there is long history of this being done.

Additional Precedent: The History Test

- There have been a few cases where the court has allowed a government endorsed religious practice because it “fits within a longstanding history or tradition.”
 - This is basically the argument petitioners Capital Park make in Part I of their brief.
 - It can be used to refute a purpose or effect argument under the Lemon Test.
 - See the Lynch case for an example of this.

Additional Items of Note

- The courts have dealt with this issue in an inconsistent manner.
- The courts have also acknowledged the historical role that religion has played in the U.S.
 - Look at a dollar (it says “in God we Trust”)
 - Congress sometimes opens session with a prayer.
 - Thanksgiving & Christmas are national holidays.
 - The Pledge of Allegiance is allowed in schools
 - Supreme Court building has religious display (see last slide), opens with court clerk saying “God save this Court.”

Petitioner (American Legion)

- First Participant -
 - Facts
 - Argument – (NOTE, arguments in different order from brief because the ones here are shorter and some are addressed by the other petitioner)
 - ➔ The lower court decision is inconsistent with the Van Orden precedent (IIIA)
 - ➔ The cross satisfies Lemon/Endorsement (IIIB)
 - ♦ No religious purpose (IIIB1)
 - ♦ No religious effect (IIIB2)
 - NOTE – even though there is not much in the brief about these arguments, all of the precedent assigned for this moot concerns these arguments. Thus, there is a lot of opportunity for drawing comparisons.

Petitioner (American Legion)

- Second Participant - Argument
 - Argument - The coercion test is the proper test for Establishment Clause Claims
 - ➔ History shows that only coercion is prohibited. (IA&B)
 - At time of founding coercion was only concern (IIB1)
 - Ignore (IIB2)
 - Debate among and conduct of drafters focuses on coercion (IIB3&4).
 - ➔ Only coercion test is workable (IC)
 - The endorsement test is unworkable (IC)
 - Only a coercion test is workable (ID)
 - ➔ The Peace Cross is not coercive (II)

Petitioner's (Park Commission) Arguments

- Sole Participant
 - NO FACTS (American Legion Petitioners will do this)
 - Argument
 - The purpose and objective meaning of the Peace Cross are secular.
 - The Peace Cross fits in a long history and tradition of displaying crosses as symbols of sacrifice and military valor.
 - A reasonable observer would not view the Peace Cross as endorsing religion

Note to Respondents

- Because they are responding to TWO petitioners, their arguments are longer.
 - Respondent #1 is mostly responding to Petitioner Park Commission
 - ➔ Primary goal is to show cross is religious symbol erected for a religious purpose and also endorses religion.
 - Respondent #2 – responding to both
 - ➔ First goal is to show that history test does not defeat claim of religious purpose and endorsement.
 - ➔ Second goal is to show why a different test would be unworkable.

Respondent's Arguments

- First Participant -
 - Facts
 - Argument – the cross is a religion symbol and was placed there with a religious purpose & endorses religion.
 - ➔ Government may not align itself with one religion (IA)
 - ♦ Solo religious display has never been allowed by the Court.
 - ♦ The cross is a religious display.
 - ➔ Use of cross turns display into a Christian display (IB)
 - ♦ Prominence of the cross turns this into a religious display.
 - ➔ Cross's context signals an endorsement of religion (IC)

Respondent's Arguments

- Second Participant
 - The history test does not apply to religious symbols (IIA)
 - Practices with strong religious origins are still unconstitutional.
 - Town of Greece case is different.
 - The coercion test is not workable for religious displays (IIB)
 - Here a discussion of why Lemon should remain is also appropriate (III)
 - Striking this display down as unconstitutional does not mean all war memorials must be removed. (IV)

What About This?



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