

# US Supreme Court deals further blow to separation of church and state

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On Wednesday, the United States Supreme Court reversed a lower court ruling, which had blocked the federal government from transferring to private ownership a small desert parcel in southern California's Mojave National Preserve. On the land stands an eight-foot "Latin Cross," meant to symbolize the crucifixion of Jesus Christ.

Congress sought to transfer the one-acre piece of land, known as Sunrise Rock, to the Veterans of Foreign Wars (VFW), after a lower federal court found that maintaining the Latin Cross on federal property violated the Establishment Clause of the First Amendment and ordered its removal.

The case, *Salazar v. Buono*, was the oldest undecided matter on the Supreme Court docket. Obama administration Solicitor General Elena Kagan, who is now considered a frontrunner for retiring Justice John Paul Stevens's high court seat, argued last October 7 in support of the land transfer. In response to a direct question by Stevens, she denied that maintaining the cross on federal land violated the constitutional prohibition against government sponsorship of religion.

Private citizens first installed a cross on Sunrise Rock in 1934, ostensibly to commemorate US soldiers who perished in World War I. The original cross disintegrated over time. In 1998, a man who owned private property nearby bolted the metal cross that is currently there to Sunrise Rock. Other individuals then sought permission to build a Buddhist shrine, known as a "stupa," near the cross. The US National Park Service denied the Buddhists' request, but added that the cross would have to be taken down as well.

When the cross remained standing, a retired Park Service official, Frank Buono, filed suit in the United States District Court in Riverside, California. The district judge found that the cross conveyed government endorsement of religion and ordered it to be removed. The cross was encased in a plywood box while that ruling was appealed to the United States Court of Appeals for the Ninth Circuit. That court affirmed the injunction in 2004. Its ruling was not appealed to the Supreme Court and became a final judgment, binding on the US government.

Meanwhile, Congress enacted a series of laws, buried in complex budgetary bills, regarding the cross. These laws forbade the use of government funds to remove it, designated the cross "a national memorial commemorating United States participation in World War I and honoring the American veterans of that war," and ordered the transfer of Sunrise Rock to the VFW on the condition that the cross be maintained as a war memorial.

The lower court issued a second injunction in 2005, ruling that the proposed "transfer of the Preserve land containing the Latin Cross, which 'as [a] sectarian war memorial carries an inherently religious message and creates an appearance of honoring only those servicemen of that particular religion,'...is an attempt by the government to evade the permanent injunction enjoining the display of the Latin Cross atop Sunrise Rock."

The Ninth Circuit again affirmed the lower's court's injunction, setting the stage for this week's Supreme Court ruling.

In a plurality decision joined only by Chief Justice John G. Roberts, Jr., and Associate Justice Samuel A. Alito, Jr., Associate Justice Anthony M. Kennedy ruled that the lower courts had not given proper deference to the motives of Congress in authorizing the land transfer. Kennedy ordered the case sent back to the trial court “to conduct a proper inquiry.”

“The District Court concentrated solely on the religious aspects of the cross, divorced from its background and context,” Kennedy wrote. “But a Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people. Here, one Latin cross in the desert evokes far more than religion. It evokes thousands of small crosses in foreign fields marking the graves of Americans who fell in battles, battles whose tragedies are compounded if the fallen are forgotten.”

Stevens answered Kennedy’s sophistry in a sharp dissent joined by Associate Justices Ruth Bader Ginsburg and Sonia Sotomayor: “Making a plain, unadorned Latin cross a war memorial does not make the cross secular. It makes the war memorial sectarian,” Stevens wrote.

The two most right-wing high court justices, Antonin Scalia and Clarence Thomas, concurred in the reversal of the lower court, making Kennedy’s three-justice opinion the final ruling. It is unclear what further hearings regarding the cross will now take place in the trial court.

What is clear, however, is the utterly result-oriented legal arguments employed by Kennedy, Roberts and Alito. One can only marvel at the lack of principles necessary for Kennedy to write, “Respect for a coordinate branch of Government forbids striking down an Act of Congress except upon a clear showing of unconstitutionality.” Three months ago he showed no similar compunctions about striking down a century of congressional legislation regulating campaign contributions by big business (See: The Supreme Court ruling on corporate political spending).

The Supreme Court first began chipping away at the Establishment Clause five years ago when it approved a granite monument of the Ten Commandments at the Texas state capitol. Two years later, it sanctioned White House meetings with religious groups to promote “faith-based” initiatives.

Sixty-three years ago, Supreme Court Justice Hugo Black, an erstwhile member of the Ku Klux Klan who evolved into an adamant defender of civil liberties during his long tenure on the Supreme Court, wrote, “The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.... In the words of [Thomas] Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between Church and State.’”

The current right-wing Supreme Court majority no longer considers this basic concept, which received pride of place in the US Constitution’s Bill of Rights and was deemed an essential component of American democracy at the time of the country’s founding, to be the law of the land.



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