

Supreme Court rules California cross is constitutional

by Randy Bright <http://www.tulsabeacon.com/?p=4032#more-4032>

The ACLU suffered a severe blow last week from the Supreme Court in a decision that reversed a lower court ruling to remove an eight-foot steel pipe cross from a 1.3 million acre Mojave Desert park in California.

The memorial cross, otherwise known as the Mojave Desert Veterans Memorial, was installed in 1934 by the Veterans of Foreign Wars as a tribute to fallen World War I soldiers.

In 1999, the ACLU sued to have the cross removed after a former employee of the park, Frank Buono, retired and moved to Oregon, then claimed that it offended him to see the cross on public land. In 2002, the U.S. District Court in Riverside, California, found in favor of their case, allowing the cross to be removed. An appeal was immediately filed to forestall its removal, but the cross was covered by a shroud pending the outcome of the appeal. Later it would be encapsulated by a wooden box.

By the time the case had been adjudicated in District Court, it had also attracted the attention of the American Legion, who joined the VFW in their battle to preserve the cross. It also attracted the attention of Congressman Jerry Lewis (R-Calif.), who first assisted the Legionnaires in getting the cross legally designated as the “National WWI Veterans Memorial” and then authored and successfully passed legislation to transfer a one-acre tract of land containing the cross to private ownership through a land swap deal.

The ACLU cried foul, claiming that it was done solely to evade the District Court’s order for the cross to be removed. In the appeal, the 9th Circuit Court not only upheld the lower court’s decision, it also invalidated the act of Congress transferring the land to private ownership.

The case was then appealed to the U. S. Supreme Court as “Ken L. Salazar, Secretary of the Interior, et al., Petitioners, v. Frank Buono, Respondent.” By a 5-4 vote, it held that both lower courts had erred in their judgments and thus refused to order the removal of the cross.

Justice Kennedy wrote the majority opinion, in which he said, “A Latin cross is not merely an affirmation 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, a 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.”

Kennedy added, “The goal of avoiding governmental endorsement (of religion) does not require eradication of all religions symbols in the public realm.”

In a brief written by the Thomas More Law Center (TMLC), it quoted the Sixth Circuit Court in a prior case: “The ACLU makes repeated reference to “the separation of church and state.” This extra-constitutional construct has grown tiresome. The First Amendment does not demand a wall of separation between church and state. Our Nation’s history is replete with governmental acknowledgement and in some cases, accommodation of religion.”

It also said, “Respondent (Buono and the ACLU) also desires this Court accept the shopworn and demonstrably false claim that the public display of a cross is per se unconstitutional and therefore anything the government does short of destroying or removing it is unconstitutional.”

The TMLC’s brief made two basic arguments. The first stated that “The First Amendment does not tolerate decisions that disfavor religion” and the second, “The First Amendment permits acknowledgement of religion but forbids hostility toward any.”

Though it is somewhat reassuring that the Supreme Court is not going to be requiring the removal of crosses from public land for now, it is disturbing that it was won only by a majority of one vote. The political demeanor of the Supreme Court is likely to change with liberal appointments before the current administration’s term is up. Knowing that, the ACLU has vowed not to give up on this case, or two similar cases involving crosses that are making their way through federal courts.

More disturbing is the prevalent attitude that, “what the public sees, the public owns” in the zoning codes that are evolving throughout the country. At what point will the courts find that crosses are equally offensive when located on private land as they are on public land, simply because they are in the “public realm”?

I don’t think that time is long in coming, but for the time being, I’m including very large, prominent crosses on the churches I design.

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