

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
 - Developed by Court in 1972. Asks what the purpose of the display is and whether it has the effect of advancing religion.
- Endorsement Test
 - An adaptation of the Lemon Test, arguably specifically for displays.
 - Asks whether a reasonable observer would deem a religious display as making non-believers feel as though they are 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.
 - › 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 Precedent: The History Test

- The Court has used a different test (coercion) for prayer cases.
- It has also said that any test must “accord...with history and faithfully reflect...the understanding of the Founding Fathers.”
 - The argument over the so-called “history test” is really about whether the founders only wished to prohibit coercion
 - Thus, this is really an argument for the coercion test.

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
 - Attend a session of Congress
 - Thanksgiving, Christmas, the Pledge of Allegiance, the Picture in the U.S. Supreme Court itself!

Petitioner (American Legion)

- First Participant -
 - Facts
 - **Argument** – (NOTE, I suggest reversing the arguments 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

Respondent's Arguments

- First Participant -
 - Facts
 - Argument – the cross is a religion symbol and was placed there with a religious purpose
 - 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.
 - By doing so this violates the Lemon test (III)

Respondent's Arguments

- Second Participant
 - The cross has effect of endorsing religion (IC)
 - ➔ Displaying the cross sends the message of supporting religion.
 - The coercion test is not workable for religious displays (IIB)
 - ➔ NOTE - skip discussion of the “history test” (IIA)
 - ➔ NOTE - here a discussion of why Lemon should remain the test might also be necessary (III)
 - Striking this display down as unconstitutional does not mean all war memorials must be removed. (IV)

What About This?



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