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Religious Symbols on Public Property

A recent case at the U.S. Court of Appeals for the Fourth Circuit found that a 40-foot tall cross at the center of a Maryland intersection violates the Establishment Clause by endorsing religion and “excessively entangl[ing] the government in religion.” *Am. Humanist Ass’n v. Maryland-National Capital Park and Planning Comm’n* (Oct. 18, 2017). The cross was erected in 1925 to commemorate the county’s World War I veterans and the land, including the cross, was later transferred to a state commission because of safety concerns from its location at a busy intersection. *Id.* at 5, 6.

The Lemon Test Applied

The Court applied the *Lemon* test and found that the case passed the first prong since the state commission acquired the cross for the secular purpose of addressing safety concerns in the intersection. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

However, the display failed the second prong since the display “would cause a reasonable observer to fairly understand it... as permissibly advancing or endorsing religion.” The court considered the history of the cross,

concluding that the cross is an exclusively Christian symbol. Although the cross serves the secular purpose of commemorating veterans, the Court found that the religious elements of the large display overwhelm the secular elements.

Lastly, the Court found that the display failed the third prong based on its excessive entanglement with religion. This entanglement includes the more than \$100,000 spent by the Commission to maintain the cross and the extensive funds needed for future restoration, as well as the inherent entanglement of displaying a large, exclusively Christian symbol. The display is therefore unconstitutional.

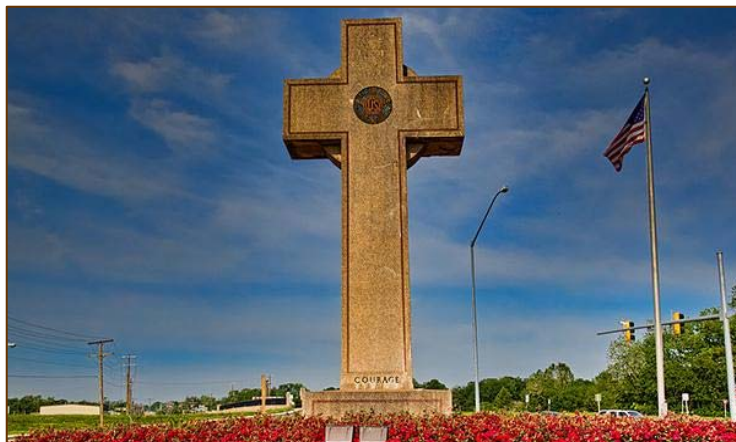
Recommendation

Cities should use caution when displaying religious symbols on public land. If city-owned lands have such religious symbols, the city should ensure that the symbols

- 1) serve a secular purpose,
- 2) do not advance or endorse religion, and
- 3) are not excessively entangled with religion.

An example would be the Arlington National Cemetery, which engraves diverse religious symbols on headstones in accordance with the veterans’ religious beliefs. This does not serve to endorse religion, but to honor veterans and to accommodate their beliefs with a small engraving in the burial process which the state is obligated to provide to its veterans.

This is a complex area of law, and cities are advised to consult their attorneys.



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