

Petitioners' Amicus Submissions: *The American Legion v. The American Humanist Association*, No. 17-1717, combined with *Maryland-National Capital Park and Planning Commission v The American Humanist Association*, No. 18-18

Amicus Submission in Support of Petitioners	Argument	Brief
84 United States Senators and Members of the House of Representatives	<p>Amici seek the continuance of the tradition of official government acknowledgement of religion in the nation's life. These elected officials note that the propriety of the use of a cross was discussed at the time that World War I memorials were under consideration and that the universal recognition of the cross as a symbol of sacrifice existed independently of any religious symbolism, making its use permissible.</p> <p>The legislators have compiled a catalog of government use of religious symbols and words. The Establishment Clause, they argue, was never intended to preclude government mention or recognition of religion. The Fourth Circuit erred in focusing on the "inherently religious" meaning of the cross as dispositive of the Establishment Clause analyses, to the exclusion of consideration of historical and traditional usage. The Court should reject a wooden application of <i>Lemon</i> and look instead to the context and history of symbols or acts in its Establishment Clause jurisprudence.</p> <p>The Establishment Clause does not command a rigid bifurcation of church and state but rather requires accommodation of religions and precludes hostility toward religion, the latter of which would be manifestly apparent were the Court to order the remodeling or removal of the Bladensburg Cross.</p>	<p>84 United States Senators and Members of the House of Representatives in Support of Petitioners</p>
The American Association of Christian Schools, Michigan Association of Christian Schools and Christian Education Association International in Support of Petitioners	<p>Amici submit that the display of the Bladensburg Cross cannot violate the Establishment Clause, for it is not a law respecting the establishment of religion. The memorial does nothing to establish or found a state religion or subject the citizens to , or impose penalty for failure to adhere to the state's religion. The extra textual <i>Lemon</i> tests exceed the boundaries of the Establishment Clause. Judicial adoption of the <i>Lemon</i> tests effectively amends the Constitution, in violation of the Court's' constitutional powers. The addition of 'endorsement' to the Establishment Clause is not appropriate and has become a nightmare in practice, for no one and no court is entirely clear what "endorsement of religion" means. This hazard is compounded by reliance on subjective perceptions. <i>Lemon</i> permits the very hostility toward religion that the Establishment Clause prohibits, for <i>Lemon</i> requires secular legislative purpose predominate to the point of secular exclusivity, an impermissible result. Although courts recite that the law must be neutral concerning religion, the interpretation of <i>Lemon</i> to exclude religion in favor of secularism falls far short of neutrality. That <i>Lemon</i> has encouraged courts to exceed constitutional boundaries and has fostered instability in the law has not gone unnoticed. As such, <i>Lemon</i> and any 'endorsement' tests must be abandoned as unsuitable as tools of analysis in Establishment Clause claims.</p>	<p>American Association of Christian Schools and Other Educational Associations in Support of Petitioners</p>
American Center for Law and Justice in Support of Petitioners	<p>Amici observe that the Court's own inconsistent application or rejection of <i>Lemon</i> invites clarification by adoption of the standards enunciated in <i>Town of Greece</i>, which will permit analyses that consider historic practices and that question whether any state action is issues imposes undue coercion on others. Amici insist that even if the Court were to decline to retire <i>Lemon</i>, the Court must dispense with "offended observer" standing as inconsistent with Article III standing principles. Amici note that examining the Framers' practices and understanding must not be done with a crabbed literalism that would render analysis futile. It is not necessary to determine whether the earlier courts enchanted "God save the United States and this honorable court." It is only necessary to determine whether similar invocations or traditions would be thought appropriate. The <i>Town of Greece</i> approach would permit historically informed decision making while guarding against undue government coercion. The <i>Town of Greece</i> did not articulate a standard for determining what constitutes coercion, but did conclude that "offense," such as that asserted as injurious here, cannot be coercion. Coercion involves a government act, not a subjective response to a passive display. Not only should the oft-reviled <i>Lemon</i> tests be abandoned, "offended observer" standing must be rejected, as abstract and ephemeral psychic perceptions are insufficiently concrete to constitute the injury in fact that Article III standing requires. The recognition of special emotional standing for Establishment Clauses cases undermines the integrity of Article III jurisprudence, which denies standing based on general grievances. Contact between an individual line of vision and a monument cannot, without more, be coercive.</p>	<p>American Center for Law and Justice in Support of Petitioners</p>

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American Civil Rights Union in Support of Petitioners	<p>Amicus argues that emotional responses to contact with public displays are insufficient to create Article III standing. Irritation that doesn't require a change in behavior is insufficient to be a cognizable injury for purposes of standing. A reasonable observer would recognize the states of the Bladensburg Cross as a war memorial rather than as an attempt to convey a religious message. Amicus offers that in the absence of a final judgment from the rulings below, the Court should exercise discretion and address the recurring issue of standing even if it was not raised by petitioners.</p> <p>Allegations of constitutional or statutory injury alone will not confer standing. Abstract injuries such as discomfort or distaste are insufficiently concrete to confer standing. In the absence of any need to forego exercise of cognizable right, the claimed injuries are abstract.</p> <p>Even if the concerns of a "reasonable observer" were considered, that observer would need to be aware of history and context, which in this case would illuminate an understanding of the Bladensburg Cross as a war memorial. Establishment Clause review must consider more than the concerns of a few expressing or experiencing discomfort, as to do so would permit precision of any display of religious imagery that a passerby might perceive to be government endorsement.</p>	<p>American Civil Rights Union</p>
The Becket Fund for Religious Liberty in Support of Petitioners	<p>The Becket Fund for Religious Liberty asks whether the <i>Lemon</i> test has been supplanted by <i>Town of Galloway v. Greece</i>, 572 U.S. 565 (2014). Becket believes the impulse towards religion is inherent in human nature and that a free society ought not suppress religious expression. The Becket Fund argues that Establishment Clause jurisprudence would be better served by abandoning the disfavored, ahistorical and essentially subjective <i>Lemon</i> test in favor of evaluating Establishment Clause claims with a view toward history, and in particular with a view toward what the Framers sought in crafting the Establishment Clause. There is no historical foundation for the notion that the Framers envisioned a religiously antiseptic government. What the Framers did want was to prohibit government establishment of a church, mandatory attendance, financial support of the established church, restriction on non-established church members' worship, restrictions on dissenters' participation in political life, and use of the established church to carry out civil functions. None of these criteria is met in this case nor likely could they be in the case of passive displays involving religious symbols. The government ought to maintain its traditional benevolent neutrality toward religion rather than encourage divisiveness, as battles over passive religious displays often do. The Becket Fund emphasizes that the Establishment Clause is primarily a structural constraint on government, not a source of individual rights sufficient to confer standing on "offended observers." Action must be predicated on denial of equal treatment, not a subjective sense of offense, without more.</p> <p>The Becket Fund urges rejection of "offended observer" standing, as offense was not among the concerns of the Framers in fashioning the Establishment Clause. The Court has never adopted offended observer standing in any discussion of passive monuments. The Court's failure to discuss offender observer standing in other religion cases cannot be construed as recognition of merit as a premise for Article III jurisdiction. Individuals coerced to participate in unwanted religious exercises may be recognized but where individuals do not personally experience unequal treatment, standing cannot be found. Any expansion of standing to include "offended observer" status would create unhelpful results as greater access to the courts would be found in Establishment Clause cases than in civil rights claims. Article III standing cannot turn on the source of the right. Recognition of "offended observer" standing would permit each and every monument in the nation to be challenged, escalating culture wars to new heights. Fear of "offended observers" has already prompted capitulation to the threats of litigation that have resulted in the eradication of history. The integrity of the judiciary is implicated in offended observer cases. Recognition of a monument with religious symbols is seen as endorsement, but denial of recognition is seen as hostility. The elimination of <i>Lemon</i>/endorsement analyses would do away with "offended observer" standing by returning to established principles regarding concrete injury in fact regarding a cognizable interest such as denial of a benefit, unequal treatment, or coercion.</p>	<p>Becket Fund for Religious Liberty</p>

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Amicus Submission in Support of Petitioners	Argument	Brief
Catholic Vote.org Education Fund for Petitioners	Amicus observes that the evaluation of Establishment Clause challenges to government erection of passive monuments featuring religious symbols is ill-served by the three prong test of <i>Lemon v. Kurtzman</i> , 403 U.S. 671 (1971). Subsequent attempts to refine Lemon through consideration of any “divisiveness” prompted by a government action or by insistence on consideration of any measure through the lens of a “reasonable observer” have only made matters worse. The preferred course is to locate a practice within historic traditions, as recognized in <i>Town of Greece v. Galloway</i> , 572 U.S. ____ (2014) and <i>Marsh v. Chambers</i> , 463 U.S. 783 (1983). The religion clauses operate to ensure religious liberty by constraining government from establishing an official religion or discriminating among faiths. The Establishment Clause does not preclude mention or acknowledgement of the existence of religion or recognizing the role of religion in the nation’s history. Moreover, the government as speaker may determine the content of its speech. Adoption of a “reasonable observer” test would remove that determination from the government and place it in the hands of an unknown hypothetical “reasonable person.” Finally, if the nation truly wishes to promote a diverse and multicultural society, the preclusion of government mention of religion would not advance this end, as doing so would discriminate by exclusion, an undesirable and constitutionally impermissible result.	Catholic Vote.org Education Fund in Support of Petitioners
The Cato Institute in Support of Petitioners	The Cato Institute, “dedicated to individual liberty, free markets, and limited government,” seeks the preservation of freedom of religious conscience, as this freedom of conscience is the core principle informing the Establishment Clause, and does not require excision of all symbols or presence of religion in the public square. Rigid preclusion of religion from public life was not among the Framers’ concerns, who sought to avoid the actual installment of a state sponsored religion. Coercion inhibits the free exercise of conscience: the observation of a passive display of a religious symbol does not. The ‘nebulous’ prongs of the <i>Lemon</i> test fail in material aspects to ensure that decisions are made with constitutional principles in mind. By permitting suit to proceed based on a subjective perception of offense, the Fourth Circuit has supplanted restraining from governmental establishment of religion with an antipathy to religion not within the Framers’ consciousness. Cato scholars urge the Court to be undeterred by rigid considerations of stare decisis, for the Court’s examination of rulings using principles of stare decisis include examining the quality of rule, its workability, its consistency with precedents, history and reliance upon the rule under consideration. <i>Lemon</i> falls short of the mark. <i>Lemon</i> expands establishment Clause analysis beyond the constitution’s terms, incorporates undefined terms and immeasurable concepts, encourages inconsistent results, and has not been followed in recent years, and fails to reflect changes in society toward religions pluralism. There is even less government involvement in religion than previously, with coercion absent. The Court can be confident that no harm to jurisprudential standards or Establishment Clause principles will come from formally abandoning <i>Lemon</i> .	The Cato Institute in Support of Petitioners
Family Members of Those Memorialized on the Peace Cross in Support of Petitioners	The families urge the Court to conclude that public memorials do not offend the Establishment Clause simply because they include religious symbols. The widespread use of such symbols throughout the nation’s history and the near century long presence of the Bladensburg Cross without objection ought not escape the Court’s attention. Destruction of the memorial would harm those who have had the comfort of knowing that an enduring memorial to their loved ones has been part of the county community for nearly a century.	Family Members of Those Memorialized on Peace Cross in Support of Petitioners

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Citizens United and Citizens United Foundation in Support of Petitioners	Committed to limited government, federalism, and free enterprise, Citizens United believes that the Judeo-Christian tradition is reflected in the nation's constitutional structure and its recognition is vital to national health. Citizens United urge the final and effective retirement of the unmanageable and discredited Lemon tests. As applied here, Lemon would compel the removal or destruction of long respected memorials throughout the nation, carrying away the nation's history in their wake. Establishment Clause analysis cannot proceed from presumptive or compelled secularism, as Lemon requires. The sanitizing of Christian symbolism is not required by the Establishment Clause. Citizens' United presents catalog of history monuments that would be unconstitutional under the Fourth Circuit's analysis. Only actual government coercion, not a subjective sense of offense, is of Establishment Clause concern. Oddly, and unfortunately, government thoughts -- its 'motivation' -- may, without more offend the Establishment Clause under Lemon. Citizens United cautions that permitting the continued vitality of Lemon would affect more than monuments and would likely require invalidation of laws providing religious accommodations, for their very existence, along with the social goods which flow from them, will be seen as advancing religion. The thinking that perceives advancement of religion at every turn may result in the suppression of religion, itself an unconstitutional result. If a public official refrains from public recital of a Christian prayer to avoid the appearance of preference, criticism for callous disrespect in failing to do so will ensue. The Court, while bound by stare decisis, is not in bondage to it, and may overrule or refrain from use of rules that prove not to serve the integrity of the law. The application of the Establishment Clause to the states through the Fourteenth Amendment is questionable, as the Establishment Clause addresses structural interests, reflecting federalism principles, and does not serve individual rights as required for Fourteenth Amendment incorporation.	Citizens United and Citizens United Foundation in Support of Petitioners
Family Members of Those Memorialized on the Peace Cross in Support of Petitioners	The families urge the Court to conclude that public memorials do not offend the Establishment Clause simply because they include religious symbols. The widespread use of such symbols throughout the nation's history and the near century long presence of the Bladensburg Cross without objection ought not escape the Court's attention. Destruction of the memorial would harm those who have had the comfort of knowing that an enduring memorial to their loved ones has been part of the county community for nearly a century.	Family Members of Those Memorialized on Peace Cross in Support of Petitioners
The Family Research Council in Support of Petitioners	The Family Research Council advocates for religious liberty, including the presence of religion in the public square. The Family Research Council observes that faith and religion are significant aspects of the human experience and provide means through which communities organize themselves. The presence of such communities can be exceptionally sustaining in times of stress and particularly in times of war. The council fears that the decision of the Fourth Circuit here signals a distressing privatization of religion. The notion that religion must not occupy any public space is counter to the nation's history, but the presence impetus to demand removal of any and all signs of religion from public life has met with some success. Should the Court permit the Fourth Circuit decision to stand, the impact on civil and military life will be substantial.	Family Research Council in Support of Petitioners
The Foundation for Moral Law in Support of Petitioners	The Foundation for Moral Law asserts that the Constitution is best understood and interpreted in accordance with the plain meaning of its terms. Prior to its presentation of a detailed review of the nation's practices in presenting public displays with religious symbols, amicus reminds the Court that the public display of the cross cannot find the First Amendment, as the tradition predates the constitution. It has long been recognized that public recognition of the role of religion in citizens' lives works no constitutional offense. Moreover, in this case, the Fourth Circuit discarded the secular significance of the cross as a symbol of military service and sacrifice. This significance is reflected in the use of the cross as an emblem of distinguished service by several branches of the military. The design of the national mall reflects the shape of the Latin Cross. As other court cases present questions affecting the ability of maintaining the tradition of permitting public displays incorporating religious symbols, the Court is urged to overturn the Fourth Circuit so that the nation's long standing and constitutionally innocuous traditions may continue, and so that respect for military service may continue to be reflected in memorials as has been the case throughout the nations' history. The Court should not fail to consider that many memorials and displays are works of art entitled to First Amendment protections.	Foundation for Moral Law in Support of Petitioners
Islam and Religious Action Team of the	As advocates for Islam, a minority religion, amicus submits that the cure for religious discrimination is not its	Islam and Religious Action Team of the

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Jewish Coalition for Religious Liberty	<p>Amici are legal and religious professionals who seek to ensure that the Establishment Clause promotes rather than inhibits religious diversity and to that end amici urge the Court to reject both “offended observer” standing and the application of any endorsement test to passive religious displays. It has been well recognized, and now should be conclusively held, that the Lemon endorsement test is not suitable to passive displays. As applied by the Fourth Circuit, the endorsement test does little to serve the aims of the Establishment Clause and much to evince the hostility toward religion that the Court has cautioned against. Moreover, conferring standing to challengers on the basis of of observational offense -- a standard not used anywhere else -- hobbles religious Americans’ exercise of rights, a result counter to the purposes of the Establishment Clause. The Court’s de facto abandonment of Lemon should become formal legal abandonment and, following <i>Town of Greece v. Galloway</i>, 572 U.S. (2014), the Court should reaffirm that non-coercive displays or activities grounded in history or tradition do not offend the Establishment Clause. The notion that a “high and impregnable” wall must separate church and state acts historical foundation. As the government has traditionally recognized some intermingling of civic government and religious life, the absolutism that suggestions expurgation of all mention of religion is undesirable at best. Religious minorities are particularly imperiled by “offended observer” standing because lack of family with a minority religious is all the more likely to precipitate perceived harm. Permitting recognition of ill informed claims itself violates the Establishment Clause as doing so embodies the hostility toward religion that the Court has determined is contrary to the Establishment Clause, which forbids not only the establishment of religion but also discrimination against religion. This is particularly problematic when more mainstream religious symbols have accrued secular significance but minority religions’ unfamiliar language and signs may, through ignorance, misinformation or arbitrariness, promote concern. Amici note that hostility to Jews is not hypothetical, with recent protests concerning Yom Kippur foo practices, zoning challenges, and dress and grooming cases. As noted, a devotion to secularism that would banish religion as a component of public life is troubling to all but more likely to harm minority faiths than others, as such groups are dependent on state accommodation of their practices, such as recognition of holidays, dietary practices, or the setting aside of public space to permit religious observance. “Discomfort” standing, when combined with the application of the errant Establishment Clause tests, threatens these accommodations. Moreover, the excision of religion from the public square will compel the abandonment and removal of symbols and practices signaling that a minority faith is welcomed. The celebration of Hanukkah at the White House and the erection of the National Menorah on the Ellipse will be precluded. Recognition of an abstract “felt offense” sufficient to compel removal of religious symbols or to ban any public practices is wholly inconsistent with both Article III and the Establishment Clause. The ephemeral of emotional offense lacks concreteness. Even disagreement, although more readily articulated, cannot by itself constitute injury in fact.</p>	<p>Jewish Coalition for Religious Liberty in Support of Petitioners</p>
Judicial Watch in Support of Petitioners	<p>Amicus Judicial Watch supports the retirement of the Lemon test, notwithstanding Judicial Watch’s view that the Bladensburg Cross would survive <i>Lemon</i> --- or other -- scrutiny had it been properly applied. <i>Lemon</i> was not properly applied, for the Fourth Circuit overlooked the core military secular purpose of the memorial and envisioned a reasonable observer lacking grounding in history and tradition. Judicial Watch urges the Court to conduct Establishment Clause analyses in accordance with the Founders’ intention to preclude state sponsored religion. Judicial Watch offers that the Establishment Clause is not a grant of protection of individual rights. If the Establishment Clause is seen as protecting individual rights, it must be because of a determination that the government has acted in a coercive manner, not because of subjective perceptions, as government coercion, not individual impressions, would be contrary to principles informing the Framers’ drafting and adoption of the Establishment Clause.</p>	<p>Judicial Watch in Support of Petitioners</p>

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Justice and Freedom Fund in Support of Petitioners	<p>As the soldiers memorialized by the Bladensburg Cross died in service of the preservation of the Constitution, it would be odd should it be determined that the same constitution compels destruction of the military memorial because it includes a religious symbol. The Constitution “protects conscience and mandates tolerance” but it does not compel sanitizing the public square of any and all mention or sign of religion, particularly where, a here, no impediment to religious liberty can be found. The courts cannot reward history and Establishment Clause history and tradition based on the imaginations of “offended observers.” The very notion of recognition of “offended observer” standing is contrary to constitutional concepts. There is no right to avoid ideas because they are disfavored, and this includes the absence of any right to be free from exposure to religion. While the government cannot compel religious conformity, religious expression is speech protected by the First Amendment. The anomalous “offended observer” has no place in jurisprudence: even a “reasonable observer” must be one cognizant of facts and context. The idea that constitutional claims may be analyzed through the lens of an imaginary observer, susceptible to mistaken beliefs and perceptions, would soon corrode the legitimacy of the law itself. A monument with religious symbolism on government land does not by that presence alone support religion. The passive commemorative display does not advocate for religion. The government may safely recognize the role of religion to society without constitutional offense, and may accommodate religious expression. Neither coercion toward religion belief or hostility against religion are permissible. No belief or action is compelled by the Bladensburg Cross: any observer is free to ignore it. The Court is urged to fashion an objective test, grounded in history, with which to address Establishment Clause concerns.</p>	<p>Justice and Freedom Fund in Support of Petitioners</p>
Liberty Counsel for Petitioners	<p>Advocates for religious liberty and the sanctity of life urge the Court to abandon the Lemon test and to implement objective measures grounded in history universality and freedom from coercion. Advocates as well as associate justices seem to have been waiting for thirty years for this opportunity to retire the unworkable standards of <i>Lemon</i>. The nation and its state and local governments are at a loss to discern whether holiday decorations will inspire joy or invite litigation and the courts’ inconsistent consideration of these issues under <i>Lemon</i> have offered little upon which to permit or to preclude public displays that include religious symbolism. The same is true of displays of the Ten Commandments as well as crosses such as the one in issue here. There is little merit in engaging in a futile quest for a grand unifying test that will fit all government involvement with religion for such matters are so many and concerns so many ideas and practices that the better course is to ground review in a national history that acknowledges but does not establish religion. “Ubiquity” as a signpost of widespread acceptance is an aid, as are considerations of the presence of absence of coercion. Without more, coercion cannot be found in the mere passive presence of a religious symbol in widespread use.</p>	<p>Liberty Counsel in Support of Petitioners</p>
Lieutenant Colonel Kamal S. Kalsi, D.O. in Support of Petitioners	<p>Amicus is a physician and a decorated military service member whose traditional Sikh dress was accommodated by the military only after exhaustive review. The doctor argues that the Bladensburg Cross ought not be removed, particularly as it was a private monument when constructed, free of any Establishment Clause concerns. Only much later did the cross come under public care, for safety reasons, and its site has not been used for religious purposes. A reasonable observer, armed with the facts, would recognize the secular nature of the government’s involvement and not find religious endorsement involved. Dr. Kalsi cautions against abandoning <i>Lemon</i>, however, observing that the consideration of the effect of government involvement with religions is important, as doing so may guard against marginalizing religious minorities. If the Court determines that there must be government coercion before any Establishment Clause violation can be found this higher standard will also contribute to marginalization of minority faiths. The Court ought not abandon earlier cases which recognized pressures of conformity to the religious majority and never required coercion as a predicate of Establishment Clause claims. It must be borne in mind that where the government signals a preference for any faith, others will see this as license to discriminate against members of other faiths. Abandoning the endorsement test could open the door to divisiveness, the very state of affairs the Establishment Clause was intended to guard against. Finally, but most importantly, members of minority religions look to the Court for protection of their interests: abandoning the endorsement test in favor of a narrow “coercion” standard will signal to minority faiths that reliance on the Court’s protections may be ill-founded.</p>	<p>Lt. Col. Kamal S. Kalsi, D.O. in Support of Petitioners</p>

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Major General Patrick Brady and Veterans	A Medal of Honor recipient and several veterans' groups argue that bystander offense is insufficient to confer	Major General Patrick Brady and
Maryland Elected Officials and Prince George'	The state elected officials and Prince George's county assert an interest in the importance of the Bladensburg	Maryland Elected Officials and Prince
Medal of Honor Recipients in Support of Petitioners	Amici are recipients of the nation's highest military honor, awarded by the President for distinguished service. Amici note that a medal of honor recipient is among those honored by the Bladensburg Cross. Amici find the Fourth Circuit's opinion disturbing and threatening to all military memorials throughout the nation. Even if the Bladensburg Memorial were partially saved, the threat of removals or refashioning will continue if the decision is not reversed, and panning for future memorials will be impaired. Custom and tradition have long favored use of the cross as an emblem of military valor and sacrifice. This should not be confused with the state sponsorship of religion. If anything the challenge to the Bladensburg Cross should raise rather than lower the legal standards for asserting Establishment Clause claims. Amici have submitted the biographies of some Medal of Honor recipients as well as photographs of architectural and personal commemorative medals incorporating cross symbols.	
National Association of Counties, National	Amici express concern that the Article III expansion of standing to include "offended observers" will permit the	National Association of Counties and
National Jewish Commission on Law and	Orthodox Jewish amici, with awareness that the cross has not always been, historically and theologically, a	National Jewish Commission on Law and
Professors of History, Politics and Law in	Professors of history, politics, and law submit that the Establishment Clause must be understood with	Professors of History, Politics and Law in
The Military Order of the Purple Heart in	The Military Order of the Purple Heart asserts that the removal of constitutional offense by removal of the	Military Order of the Purple Heart in
The Center for Constitutional Jurisprudence	This public interest center, affiliated with the Claremont Institute, asserts that in the absence of any	Center for Constitutional Jurisprudence in
The Public Advocate of the United States, Conservative Legal Defense and Education Fund, 60 Plus Foundation, Patriotic Veterans, One Nation Under God Foundation, Fitzgerald Griffin Foundation, Policy Analysis Center, Pass the Salt Ministries, Restoring Liberty Action Committee, and Center for Morality in Support of Petitioners	Amici point out that the dissonant applications of <i>Lemon</i> and <i>Van Orden</i> at the trial and appellate level in this case underscores the unwieldy and ineffectual tests currently in use in Establishment Clause cases. Amici fear the tests have permitted judges to usurp the will of the people, which at the time of the nation's founding was to keep the government out of the realm of religion. Amici observe that it is undeniable that many plaintiffs in establishment clause challenges have an anti-Christian agenda which courts tolerate where similar antipathy to other faiths would not be countenanced. Amici urge that the Establishment Clause operates as a constraint upon the government not as an instrument of interpretation for its courts. The religion clause is clear: the government is not to interfere with religion. The intent was and ought to remain the promotion of freedom of conscience by mandating that the government refrain from involvement in religion. Amici see the Establishment Clause as in its essence a jurisdictional rule that prohibits government from taking jurisdiction of religious matters. Here, where the law has long permitted the establishment of war memorials, the incorporation of the cross as symbol is immaterial. Amici caution that permitting the Fourth Circuit opinion to stand would essentially establish a pagan religion, an undesirable result.	Public Advocate of the United States and Others in Support of Petitioners

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Religious Denominations and Other Religious Institutions in Support of Petitioners	Amici urge the Court to reject as too narrow any proposed “coercion” test limiting Establishment Clause protections only to circumstances involving government coercion. Amici likewise urge the Court to jettison in whole or in part the three part test enunciated in <i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971), which has proved unwieldy and has failed to promote a clear Establishment Clause jurisprudence. Amici urge the Court to ground all Establishment Clause analyses in history and with reference to the Framers’ intent. The Establishment Clause was intended to secure individual as well as institutional liberties, and reflected concern with at least seven threats to religious liberty: 1) official government declaration of a preferred faith; 2) government involvement in church doctrine, teaching, governance or personnel; 3) state mandated participation in the established church; 4) prohibition of activity in non-official churches; 5) restrictions on public participation to members of an established church; 6) mandatory financial support for an established church; 7) delegation of government functions to an established church. The display of the Bladensburg Cross does not fall within any of these historic concerns with state-sponsored religion. Amici question whether the park commission’s purchase and maintenance of the monument with tax funds is the sort of activity that can be said to be state sponsorship of religion. This is particularly so, amici offer, where the American Legion is neither a church nor a government entity, but a Congressionally funded veterans’ organization.	Religious Denominations and Other Religious Groups in Support of Petitioners
Retired Generals and Flag Officers in Support of Petitioners	The retired military officers’ long years of service lead them to conclude that respective and enduring memorialization of soldiers and leaders’ sacrifices for the nation are integral and essential to the dignity and morale of the nation’s armed forces. The building of memorials, from handcrafted crosses used to mark makeshift graves to congressional appropriations to support sponsored memorials, has its own history and ethos. The use of the cross as an emblem of bravery and sacrifice extends beyond its religious significance and is widely recognized as such. The plain error of the Fourth Circuit in concluding that a cross is inherently impermissibly sectarian threatens the existence of memorials throughout the United States, and cannot be permitted to stand.	Retired Generals and Flag Officers in Support of Petitioners
The Rutherford Institute in Support of Petitioners	Civil liberties advocates insist that no one, particularly not the Supreme Court, can be so confused as to think that the Founders’ concern with freedom of religion meant freedom from religion. The Fourth Circuit’s insistence on the razing or refashioning of the Bladensburg Cross calls to mind the 2001 destruction of ancient symbols of the Buddha by the Taliban in Afghanistan. The United States’ First Amendment forbids, rather than compels, such a result. Destruction or diminution of Bladensburg Cross invites the divisiveness that the principles of neutrality embodied in the Establishment Clause are designed to inhibit. The government can no more preference non-religion, such as the American Humanist Society here, than it can promote any of the Abrahamic or other theistic faiths. Because destroying the Bladensburg Cross would do just that, it cannot be permitted.	The Rutherford Institute in Support of Petitioners

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Amicus Submission in Support of Petitioners	Argument	Brief
The State of Maryland in Support of Petitioners	The State of Maryland has an interest in preserving the reserved property interests of the American Legion in the Bladensburg Cross, which is owned and maintained by its state agency, the petitioner the Maryland-National Capital Parks Commission. The sole reason that the parks commission assumed ownership of the monument was to ensure its maintenance and, in turn, to ensure public safety endangered by the potential of the aging structure to crumble and in so doing, cause harm. The state urges the court to determine that state ownership solely for maintenance purposes of a historic memorial, which is not unusual when private historic monuments age, cannot offend the Establishment Clause. In this case the American Legion manages any activities with respect to the monument. The state has no involvement in such matters and no contact with any religious organizations in the course of its preservation efforts. The state requests the course to consider each question of state involvement in Establishment Clause matters within its context and with reference to the state's role and purpose in involvement with any monument. Where property appears private and is used as if it were private, state involvement in maintenance should not be of constitutional magnitude. If maintenance operations are held to offend the Establishment Clause, the state will be left with no choice but to require removal of the monuments, and in so doing facilitate the destruction of historic works and signaling disrespect to those memorialized by monuments, their families, and their communities.	State of Maryland in Support of Petitioners
Thomas More Law Center in Support of Petitioners	Advocates in support of religious liberty remind the Court that precedent established that a public display need not be stripped of all religious meaning to be constitutionally acceptable. The Bladensburg Cross advances the secular purpose of commemorating war dead. This history and purposes of uses of religious symbols in the public square are facts which cannot be distorted or discarded to conform to ideas currently in vogue. In addition, it cannot be permissible for analyses to proceed according to a judge's subjective notions. It is appropriate to consider the cross in its historical context, in its acceptability in practices and precedent, and to permit the cross to stand test its destruction deprive the nation of the future of a sense of its past. The preservation of history is a worthy goal, particularly where, as here, advancing that goal works no impediment to religious liberty.	Thomas More Law Center in Support of Petitioners
The Town of Taos, New Mexico in Support of Petitioners	The Town of Taos, New Mexico, is under threat of suit because its monument to New Mexican soldiers who served in World War II, of whom some endured the infamous Bataan Death March, incorporates a cross. The town argues that the Fourth Circuit's decision is wrong because it conflicts with the original public meaning of the Establishment Clause. The Court is aware that Establishment Clause jurisprudence has become unmoored from historic and contextual roots, resulting in decisions like the one before the Court which threatens public displays throughout the nation. A passive display incorporating a religious symbol can hardly be said to be a "law respecting an establishment of religion." The Fourth's Circuits review fails to comport with the text of the Establishment Clause and is fatally deficient in failing to comprehend the Framers' understanding. The Establishment Clause reflects the Framers' fear of state sponsored religion. Practice and customs reflected in historic records suggest no similar fears attached to incidental and occasional use of religious language or symbols in the public square. The forced removal of the Bladensburg Cross will likely herald the same fate for Taos' War Mothers' Memorial, which is the Town of Taos' centerpiece. Similar removal of memorials through the country will undoubtedly ensue if the Fourth Circuit's decision is upheld.	Town of Taos, New Mexico in Support of Petitioners
Utah Highway Patrol Association in Support of Petitioners	The Utah Highway Patrol Association removed roadside memorials honoring fallen patrolmen when the Tenth Circuit found the practice violated the Establishment Clause. The association urges the Court to overturn the Fourth Circuit's determination in this case so that symbols commonly serving may remain in place and be recognized as constitutionally unobjectionable. The association submits that the true loss in issue is the loss of the names and memories of those who have served the country well. Removing the misperceived constitutional barrier to memorializing those persons would aid in preserved as many memories as possible. The association notes that even in the midst of secularist trends, the use of the fused steel bear cross memorializing lives lost on September 11, 2001 has not met with disfavor, either publicly or by the judiciary. The presence of a memorial cross signals the existence of a special place to gather to mourn, to be consoled, and to share community. The Second Circuit recognized this call to the universal human spirit in the 9/11 memorial in rejecting atheists' objections.	Utah Highway Patrol in Support of Petitioners

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Veterans in Defense of Liberty and Others in Support of Petitioners	Amici stress that the Establishment Clause and the Free Exercise Clause operate in service of and not in antagonism toward religion, encouraging religion to flourish in the absence of government interference. To assume or to argue that a religious symbol on a publicly maintained display by its very presence operates to establish religion is to act in ignorance of the meaning of the Establishment Clause. The three part test of <i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971), pressed into service too frequently and too awkwardly by the lower courts, with poor results, has not been relied upon by the Supreme Court in a dozen years, silently signalling that it is time to reconsider reliance on <i>Lemon</i> and to rely instead on the historic meaning of and practices concerning the Establishment Clause. The prohibition on government interference in religion was never intended to preclude public acknowledgment of religion, nor to deny memorialization of lives lost in war through use of a symbol of sacrifice. The Court is urged to remain mindful that the Establishment Clause constraints operate on the government, not on religion, and that, as a result, the United States has benefited from the charitable and educational activities of religious organizations throughout its history.	Veterans in Defense of Liberty in Support of Petitioners
The United States of America as Amicus for Petitioners	The United States urges the Court to hold that the passive display of the Bladensburg Cross does not violate the Establishment Clause. The United States reminds the Court that the absence of clear standards for Establishment Clause challenges to this and other displays has resulted in offering tests being applied in different fashions by different courts, causing contention over the passive displays of religious symbols to foment the very kind of divisiveness that the Establishment Clause was intended to deter. While acknowledging flaws of the tests employed and applied by the courts, the United States argues that even under those tests, no constitutional defect can be found. The Bladensburg monument is situated among others honoring service to the United States. The Establishment Clause was never intended to preclude the acknowledgment of religion in public life. No one observing the monument is coerced into adopting a particular religious belief: the offense taken by respondents is not coercion. A review of the country's history indicates that benign symbolic expressions, including legislative prayer, do not offend the Establishment Clause. The predominantly commemorative nature of the Bladensburg display further removes it from the realm of religious entanglement. The United States cautions the Court that to conclude that the Bladensburg Cross violates the Establishment Clause would cause widespread removal or refashioning of monuments throughout the United States.	United States of America in Support of Petitioners
The Veterans of Foreign Wars and Others in Support of Petitioners	The Veterans of Foreign Wars (VFW) offer that the Court has previously observed that the history of man and the history of religion are inextricably intertwined, making it predictable that the religious refugees who founded this country would bring religious language and symbols with them and incorporate this in their development of a new form of government. The cross has served as a symbol of service and sacrifice throughout the nation's history. World War I monuments, such as the initially privately funded Bladensburg Cross, were among the ubiquitous and universal uses of the cross that continues to this day within the Veterans of Foreign Wars' insignia. This insignia serves as an emblem of service for the more than 1.2 million veterans' of foreign wars. The Fourth Circuit erred in not recognizing the history and context of the use of the cross as a symbol of military service. The Veterans of Foreign Wars fear that ongoing conflicts concerning the use of the cross at military memorials and gravesites will corrode the memories of the dead and do little, if anything, for the living. The VFW asks the Court to turn away from a course that could mandate the removal or destruction of memorials throughout the nation.	Veterans of Foreign Wars and Others in Support of Petitioners

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Amicus Submission in Support of Petitioners	Argument	Brief
The Wisconsin Institute for Law and Liberty in Support of Petitioners	<p>The Wisconsin Institute for law and liberty suggests that the Court revisit the application of the Establishment Clause to the states, as this application stands the intent of the Establishment Clause on its head. Originally a constraint on federal powers, the Establishment Clause as currently construed inhibits the states. The Court must consider its interpretation of speech with respect to the Establishment Clause for as currently construed the religious liberty that the clause was intended to ensure will be impaired if any mention or display involving religion in civic life is considered anathema. The Court has protected citizens from government endorsement of religion that makes some feel outside the community, but the Court need not protect against an innocuous encounter with a monument that incorporates a religious symbol. While the court has prohibited speech endorsing religion, no protection has been extended to those who are discomfited by speech contemptuous of religion. The Fourteenth Amendment cannot serve as a vehicle with which to incorporate the application of the Establishment Clause to the states, for the Establishment Clause does not concern the individual rights which are the subject of Fourteenth Amendment protections. If the Court decides that the Establishment Clause does protect any individual right, the Court must decide what that right is. Is it freedom from state establishment of religion? Is it freedom from religious coercion? Or is it of sufficient breadth to encompass objection to viewing a religious symbol? The tests selected by the courts have been unevenly interpreted and applied, leading to inconsistent results, a situation which threatens rather than protects any individual rights that may be found within the Establishment Clause. Any clarification the Court might undertake must be grounded in history and tradition.</p>	<p>Wisconsin Institute for Law and Liberty in Support of Petitioners</p>
West Virginia and 29 Other States in Support of Petitioners	<p>Amici note that the debt owed those who have given their lives to the country has traditionally been honored through erection of physical memorials. Before the Court is an Establishment Clause challenge concerning a monument built with private funds, originally displayed on private lands and never used for religious purposes. Because of its shape, however, removal or remodeling of the Bladensburg Cross is sought, notwithstanding that the Court has already held that such monuments, having secular purposes, do not offend the Establishment Clause. <i>Van Orden v. Perry</i>, 545 U.S. 677 (2005). The tension within the several guarantees of the First Amendment has prompted no small amount of litigation. The present case serves as an invitation to the Court to do away with the ill-fitting three pronged Lemon test and adopt a historical and contextual approach to Establishment Clause review. The use of religious imagery, including in particular various representations of crosses, has been extensive through the nation's history. In the context of war memorials, the cross has developed and retained secular significance, memorializing service and sacrifice. The historic use of religious symbols having secular significance in the context of war memorials, such as the cross at Bladensburg, is sufficient to permit the Bladensburg Cross to survive Establishment Clause challenge.</p>	<p>West Virginia and 29 Other States in Support of Petitioners</p>

Respondents' Amicus Submissions: The American Legion v. The American Humanist Association, No. 17-1717, combined with Maryland-National Capital Park and Planning Commission v The American Humanist Association, No. 18-18

Amicus Submission for Respondents	Argument	Brief
<p>Baptist Joint Committee for Religious Liberty, American Jewish Committee, Central Conference of American Rabbis, Evangelical Lutheran Church in America, General Synod of the United Church of Christ, Reverend Dr. J. Herbert Nelson, II, as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) in Support of Respondents</p>	<p>Several Protestant and two Jewish organizations urge the Court to dispense with any rationalizations or fictions that the cross, as the central symbol of Christianity, is something other than that. To engage in such intellectual exercises would only invite more, while at the same time denying the inherently religious meaning of the as a symbol of the divine and redemptive power of Christ. The elevation of any secondary secular meaning to primacy demeans the faith of many and insults the intelligence of all. Amici caution that the Bladensburg Cross case cannot be decided with reference to cases requiring the government to be neutral as between the government and religion. Rather the issue is that the government must be neutral among religions. If the Bladensburg Cross is permitted to remain standing, it ought to be permitted to do so only as an historic artifact.</p>	<p>Baptist Joint Committee for Religious Liberty, et al.</p>
<p>Freedom from Religion Foundation, Center for Inquiry, American Atheists, Inc., Military Association of Atheists and Free-Thinkers, and Secular Coalition of America in Support of Respondents</p>	<p>Secular humanist amici submit that one fourth to one third of the nation's religiously unaffiliated or non-believing population are stigmatized and marginalized when the government permits the use of religious symbolism, which use causes these individuals to feel themselves to be outside the body politic. Amici controvert assertions that Christian symbols have been used to honor fallen soldiers of many traditions, offering a review of historic records to the contrary. Amici predict that adopting a "coercion" test to guide Establishment Clause jurisprudence would create even more stigmatization and marginalization for nonbelievers and religious minorities than already exists.</p>	<p>Freedom from Religion Foundation, et al. in Support of Respondents</p>
<p>Historians and Legal Scholars in Support of Respondents</p>	<p>Specialists in Establishment Clause law and history urge the Court to reject the government's proffered "coercion" test as an a-historical limitation on Establishment Clause principles. The Framers sought to promote social unity which would not ensue were the government to engage in sectarian measures or use sectarian symbols or language. As the Christian cross fails to reflect the religious or non-religious views of much of the population, the government's placement of a Christian cross on government property fails to honor the religious pluralism envisioned by the Framers.</p> <p>No limitation to "coercive" government measures is supported by history: the framers were concerned with the government's potential use of many forms of religious influence which would promote division among faiths. History demonstrates that the original states embodied varying degrees of church/state involvement and represented varying religious groups. Flight from religious persecution was a cornerstone of the nation's creation, causing any form of government involvement in religion to be viewed with circumspection. The use of religion to suit the government's aims was anathema, and public use of religious language was designed to be a neutral and encompassing as possible.</p> <p>It is disingenuous to suggest that the Latin cross is other than the primary symbol of Western Christianity: any secondary or generalized secular meaning is derivative of its first. A religious coercion test is insufficient to address the broader and subtler ways in which religion might influence government. The exercise of government authority in religious matters would have been incongruous with the natural law philosophy that the Framers' embraced.</p> <p>"Coercion" is an unsupportable and unworkable test, as no one can agree on what 'coercion' means. Battles among denominations concerning forced assessments vividly attest to this.</p>	<p>Historians and Legal Scholars in Support of Respondents</p>
<p>Jewish War Veterans of the United States of America in Support of Respondents</p>	<p>As the oldest association of its kind, the Jewish War Veterans urge the Court to recognize that the potency of the principal symbol of Western Christianity -- the Latin Cross - is only heightened by the government's use of that cross to memorialize war dead. The Jewish War Veterans argue that Jews who died for their country are not honored by the display of the cross, which to Jews signals only exclusion; it is love of country, not the cross, that unites veterans. The Jewish War Veterans urge the Court to resist engagement in elaborate analyses of tests for Establishment Clause violations and instead to focus on the core constitutional constraint which forbids the government from preferring one religion over another. A "coercion" standard would fail to inhibit the government from affording preferential treatment to one religion over another.</p>	<p>Jewish War Veterans of the United States of America in Support of Respondents</p>

Law Professors in Support of Respondents	Law professors with expertise in religious liberty questions take issue with petitioners' amici's advocacy against recognition of "offended observer" standing. The professors submit that the Court has decided Establishment Clause cases about visual or auditory displays for decades without becoming enmeshed in observer standing. A student, for example, may have a cognizable injury where school prayer is concerned even if coercion is absent. While it may be that those who are at a remove may not be able to demonstrate the concrete injury necessary for standing, this does not mean that those whose daily commerce brings them into contact with messages that cause harm cannot come to the courts for redress. It is of no moment that the harms alleged are psychological, for such harms are central to many recognized issues. The Court is not without precedent in recognizing observer standing, as it has done so in environmental cases.	Law Professors in Support of Respondents
Military Religious Freedom Foundation and Sixteen High Ranking Military Officials and Veterans in Support of Respondents	The Military Religious Freedom Foundation reminds the Court that unity of purpose is essential to functioning armed forces. Preferential treatment accorded Christian faiths not only offends the Constitution but also erodes the central mission of the military. Contemporary servicemen and women have been discriminated against where the military has adopted Christian beliefs as its or has permitting targeting of members of other groups for mistreatment. The Bladensburg Cross stands as "a memorial to religious-based exclusion" which has omitted Jewish war dead. The dedication of the cross in 1925 was wholly Christian and was publicly acknowledged as a religious monument.	Military Religious Freedom Foundation and Sixteen High Ranking Military Officials and Veterans in Support of Respondents
Muslim Advocates in Support of Respondents	The civil rights group Muslim Advocates seeks to ensure Muslim participation in public life and to assert in this case the interests of Muslims as a religious minority that has been victimized by discrimination and subjected to hate crimes, particularly within the current executive administration. "Coercion" has never been a request component of Establishment Clause cases. Government endorsement of and entanglement in religions suffice to establish constitutional injury. Recent consideration of prayer at public meetings did not conclude that all prayer would be acceptable if not coerced but rather suggested that in the absence of alternative means of offering prayer, the Establishment Clause might be violated. The Bladensburg Cross does not involve a public place in which to speak: the display of the cross is a government act. Adoption of a coercion test would forbid nothing and require reversal of precedent. More than precluding the installation of a state religion was in issue in adopting the Establishment Clause, as the Framers' drafts demonstrate. As the Latin Cross is the primary symbol of Christianity, the government's display of that Cross, standing alone, cannot have any purpose and effect other than to indicate government endorsement of Christianity, notwithstanding rationalizations about generalized meaning.	Muslim Advocates in Support of Respondents
Professors Dellinger and Lederman in Support of Neither Party	Professors Dellinger and Lederman submit that the government could not today erect a monument to war dead featuring the Latin Cross, the central symbol of Christianity, for so doing would preference Christianity above other faiths, directly contrary to the Establishment Clause's prohibitions. The Cross in Bladensburg might be saved, however, because it can be seen as a collective memorial to individual Christian soldiers and because it was erected at a time when the nation was predominantly Christian. Moreover, at the time the monument was dedicated the Establishment Clause had not been determined to apply to the states through the Fourteenth Amendment, and because the Maryland Constitution does not prohibit religious establishments.	Professors Dellinger and Lederman in Support of Neither Party
Religious and Civil Rights Organizations in Support of Respondents	Amici describe themselves as organizations whose members have been "subjected to religious discrimination and official disfavor." Amici argue that the display of a Christian cross as a war memorial harms non-Christian veterans. The Cross signals exclusion of non-Christians, and stands in contradiction to the Framers' insistence that government maintain denominational neutrality. The Religion Clauses were adopted in service of religious freedom and freedom of conscience, which the Framers thought would be best advanced in the absence of government interference. The Cross is an undeniable symbol of Christianity, and the government's selection of the cross is an impermissible showing of religious favoritism. No social understanding concerning a generalized honoring of war dead contravenes this impermissible preferencing of Christianity. The selection and display of the Cross does more than exclude non-Christians: it imposes Christian Theology on all. Adoption of a coercion standard ill serves the principle of non-preferential treatment and would be contrary to principles of constitutional construction. Adoption of a coercion standard for the Establishment Clause would render the Free Exercise Clause meaningless, contrary to the traditional view that no part of the Constitution is to be considered insignificant.	Religious and Civil Rights Organizations in Support of Respondents

An exclusively historic approach is equally unavailing: precedent precludes excusing constitutional violations simply because a practice is grounded in history. Any historical approach is of doubtful utility given that the Establishment Clause was not applied to the states until the mid-twentieth century. The predominantly Protestant founders could not have imagined the diversity of beliefs and persons comprising the United States today. The absence of previous challenges to the display of the cross cannot be said to be evidence of the absence of objection, particularly where the costs, financial and social, of contravening norms may be exceptionally high.