

SCOTUS Opinion: Court Permits The Bladensburg Peace Cross To Remain Standing

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The Bladensburg Peace Cross was erected in 1925 on public land as a tribute to the lives of 49 soldiers from the local area who died in World War I. Certain atheistic groups filed suit in federal court, arguing that the cross violated the First Amendment's Establishment Clause. The district court dismissed the case under the tests set forth in [Lemon v. Kurtzman](#), 403 U.S. 602 (1971), and used in the Ten Commandments monument case of [Van Orden v. Perry](#), 545 U.S. 677 (2005). The Fourth Circuit reversed, holding that the cross had to come down. In [American Legion v. American Humanist Assoc.](#), the Court held 7-2 that the cross can stay. Justice Alito's lead opinion held that "the passage of time . . . gives rise to a strong presumption of constitutionality, and thus the fact that the cross had been in place for 89 years before being challenged weighed against it being an unconstitutional support of religion by the state. Over time, the cross became more aligned with the secular purpose of honoring veterans than furthering Christianity, and to remove the cross now would signal an animosity toward religion, which is out of step with the ideals of respect and tolerance embodied in the First Amendment. Justice Alito, joined by Chief Justice Roberts and Justices Breyer and Kavanaugh, criticized the *Lemon* test's applicability to cases like this one. Justice Thomas filed a concurrence stating his belief that the Establishment Clause should not be incorporated against the States, and would overrule the *Lemon* test in all contexts. Justice Gorsuch, joined by Justice Thomas, concurred in the judgment, arguing that the challengers to the Cross lacked standing, since "offended observers" do not suffer an injury-in-fact. Justice Breyer, joined by Justice Kagan, also concurred, stating that there is no single formula for resolving Establishment Clause challenges, and the Cross here passed muster because of its secular motives and lack of any disparagement toward any group. Justice Kavanaugh filed a concurrence to note that the Court has shelved the *Lemon* test, and that those who object to the Cross can still petition the state government to remove it, as the Court's decision does not force Maryland to maintain it. Justice Kagan also filed a concurrence to state that she still finds the *Lemon* test useful, despite the majority's decision to discard it. Justice Ginsburg, joined by Justice Sotomayor, dissented, arguing that the Cross by its nature impermissibly elevates Christianity over other faiths. A link to the opinion is [here](#).

TAGGED: [scotus](#), [First Amendment](#), [Establishment Clause](#), [SCOTUS opinions](#), [Lemon v. Kurtzman](#), [American Legion v. American Humanist Assoc.](#), [secular purpose](#), [Lemon test](#)