AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 11: The Contemporary Era – Religion: Establishment: Religious Monuments

**American Legion v. American Humanist Association**, \_\_\_ U.S. \_\_\_ (2019)

*The American Legion in the wake of World War I provided the necessary funding for the residents of Prince George’s County, Maryland to build a memorial honoring those Americans who died in World War One. The memorial, a 32-foot Latin cross, now known as the Bladensburg Cross, presently standards at the center of a heavily travelled intersection. Maryland in 1961 acquired the cross and uses public funds for upkeep, but the American Legion retains the right to use the property for patriotic ceremonies. In 2014, the American Humanist Associated filed a lawsuit claiming that state ownership of a memorial with a highly visible Latin cross violated the establishment clause of the First Amendment as incorporated by the due process clause of the Fourteenth Amendment. The local district court rejected that lawsuit, but that decision was reversed by the Court of Appeals for the Fourth Circuit. The American Legion appealed to the Supreme Court of the United States.*

 *The Supreme Court by a 7-2 vote reserved the decision of the Fourth Circuit. Justice Samuel Alito’s majority opinion held that a constitutional presumption existed that longstanding monuments with religious symbols were constitutional and that the American Humanist Society provided no reasons for overcoming that presumption in this case. Alito’s opinion discards* Lemon v. Kurtzman *(1971). Did he abandon the* Lemon *test for monuments or for all matters? What is the foundation of the presumption that longstanding religious monuments are constitutional? Is that presumption sound? Should have presumption, as Justice Neil Gorsuch suggests, applied to all similar monuments, past and present, or as Justice Stephen Breyer suggests, be limited to historical monuments? Should the court instead engage in the presumption suggested by the dissent, that religious monuments are presumptive unconstitutional.* American Legion *united the conservatives on the court, but divided the liberals. What best explains the unity and division?*

Justice [ALITO](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0153052401&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a) announced the judgment of the Court

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Although the cross has long been a preeminent Christian symbol, its use in the Bladensburg memorial has a special significance. After the First World War, the picture of row after row of plain white crosses marking the overseas graves of soldiers who had lost their lives in that horrible conflict was emblazoned on the minds of Americans at home, and the adoption of the cross as the Bladensburg memorial must be viewed in that historical context. For nearly a century, the Bladensburg Cross has expressed the community’s grief at the loss of the young men who perished, its thanks for their sacrifice, and its dedication to the ideals for which they fought. It has become a prominent community landmark, and its removal or radical alteration at this date would be seen by many not as a neutral act but as the manifestation of “a hostility toward religion that has no place in our Establishment Clause traditions.” And contrary to respondents’ intimations, there is no evidence of discriminatory intent in the selection of the design of the memorial or the decision of a Maryland commission to maintain it. The Religion Clauses of the Constitution aim to foster a society in which people of all beliefs can live together harmoniously, and the presence of the Bladensburg Cross on the land where it has stood for so many years is fully consistent with that aim.

The cross came into widespread use as a symbol of Christianity by the fourth century,[1](https://1.next.westlaw.com/Document/I90a2c408933011e99b14f2ee541cf11a/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad740350000016bfce431c1d34d6239%3FNav%3DCASE%26fragmentIdentifier%3DI90a2c408933011e99b14f2ee541cf11a%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.History*oc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=93af8473d5e3045e060f378cb800e6b4&list=CASE&rank=12&sessionScopeId=874f7c28a9b2e7464d92385157261f076d0dc7297ace83512860e7eee6325db6&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.History*oc.Search%29#co_footnote_B00032048519600) and it retains that meaning today. But there are many contexts in which the symbol has also taken on a secular meaning. . . . The familiar symbol of the Red Cross—a red cross on a white background—shows how the meaning of a symbol that was originally religious can be transformed. The International Committee of the Red Cross (ICRC) selected that symbol in 1863 because it was thought to call to mind the flag of Switzerland, a country widely known for its neutrality. . . .

The image used in the Bladensburg memorial—a plain Latin cross—also took on new meaning after World War I. “During and immediately after the war, the army marked soldiers’ graves with temporary wooden crosses or Stars of David”—a departure from the prior practice of marking graves in American military cemeteries with uniform rectangular slabs. The vast majority of these grave markers consisted of crosses, and thus when Americans saw photographs of these cemeteries, what struck them were rows and rows of plain white crosses. As a result, the image of a simple white cross “developed into a ‘central symbol’” of the conflict. . . .

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The Establishment Clause of the First Amendment provides that “Congress shall make no law respecting an establishment of religion.” While the concept of a formally established church is straightforward, pinning down the meaning of a “law respecting an establishment of religion” has proved to be a vexing problem. . . . After grappling with such cases for more than 20 years, *Lemon* [*v. Kurtzman*](1971) ambitiously attempted to distill from the Court’s existing case law a test that would bring order and predictability to Establishment Clause decisionmaking. That test . . . called on courts to examine the purposes and effects of a challenged government action, as well as any entanglement with religion that it might entail. The Court later elaborated that the “effect[s]” of a challenged action should be assessed by asking whether a “reasonable observer” would conclude that the action constituted an “endorsement” of religion. *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter* (1989).

If the [*Lemon*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1971127111&pubNum=0000780&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) Court thought that its test would provide a framework for all future Establishment Clause decisions, its expectation has not been met. In many cases, this Court has either expressly declined to apply the test or has simply ignored it. . . . As Establishment Clause cases involving a great array of laws and practices came to the Court, it became more and more apparent that the [*Lemon*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1971127111&pubNum=0000780&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) test could not resolve them. It could not “explain the Establishment Clause’s tolerance, for example, of the prayers that open legislative meetings, ... certain references to, and invocations of, the Deity in the public words of public officials; the public references to God on coins, decrees, and buildings; or the attention paid to the religious objectives of certain holidays, including Thanksgiving.”

For at least four reasons, the [*Lemon*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1971127111&pubNum=0000780&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) test presents particularly daunting problems in cases, including the one now before us, that involve the use, for ceremonial, celebratory, or commemorative purposes, of words or symbols with religious associations. Together, these considerations counsel against efforts to evaluate such cases under [*Lemon*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1971127111&pubNum=0000780&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) and toward application of a presumption of constitutionality for longstanding monuments, symbols, and practices.

First, these cases often concern monuments, symbols, or practices that were first established long ago, and in such cases, identifying their original purpose or purposes may be especially difficult. . . . Second, as time goes by, the purposes associated with an established monument, symbol, or practice often multiply. . . . Even if the original purpose of a monument was infused with religion, the passage of time may obscure that sentiment. As our society becomes more and more religiously diverse, a community may preserve such monuments, symbols, and practices for the sake of their historical significance or their place in a common cultural heritage. . . . Third, just as the purpose for maintaining a monument, symbol, or practice may evolve, “[t]he ‘message’ conveyed ... may change over time.” . . . [C]onsider the many cities and towns across the United States that bear religious names. . . . [F]ew would argue that this history requires that these names be erased from the map. Fourth, when time’s passage imbues a religiously expressive monument, symbol, or practice with this kind of familiarity and historical significance, removing it may no longer appear neutral, especially to the local community for which it has taken on particular meaning. A government that roams the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine will strike many as aggressively hostile to religion. . . .

The role of the cross in World War I memorials is illustrative of each of the four preceding considerations. Immediately following the war, “[c]ommunities across America built memorials to commemorate those who had served the nation in the struggle to make the world safe for democracy. Although not all of these communities included a cross in their memorials, the cross had become a symbol closely linked to the war. . . . In the wake of the war, the United States adopted the cross as part of its military honors, establishing the Distinguished Service Cross and the Navy Cross in 1918 and 1919, respectively. . . . The solemn image of endless rows of white crosses became inextricably linked with and symbolic of the ultimate price paid by 116,000 soldiers. And this relationship between the cross and the war undoubtedly influenced the design of the many war memorials that sprang up across the Nation.

This is not to say that the cross’s association with the war was the sole or dominant motivation for the inclusion of the symbol in every World War I memorial that features it. But today, it is all but impossible to tell whether that was so. The passage of time means that testimony from those actually involved in the decisionmaking process is generally unavailable, and attempting to uncover their motivations invites rampant speculation. And no matter what the original purposes for the erection of a monument, a community may wish to preserve it for very different reasons, such as the historic preservation and traffic-safety concerns the Commission has pressed here. . . . [A]s World War I monuments have endured through the years and become a familiar part of the physical and cultural landscape, requiring their removal would not be viewed by many as a neutral act. And an alteration like the one entertained by the Fourth Circuit—amputating the arms of the Cross would be seen by many as profoundly disrespectful.

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[T]the Bladensburg Cross carries special significance in commemorating World War I. Due in large part to the image of the simple wooden crosses that originally marked the graves of American soldiers killed in the war, the cross became a symbol of their sacrifice, and the design of the Bladensburg Cross must be understood in light of that background. That the cross originated as a Christian symbol and retains that meaning in many contexts does not change the fact that the symbol took on an added secular meaning when used in World War I memorials.

Not only did the Bladensburg Cross begin with this meaning, but with the passage of time, it has acquired historical importance. It reminds the people of Bladensburg and surrounding areas of the deeds of their predecessors and of the sacrifices they made in a war fought in the name of democracy. As long as it is retained in its original place and form, it speaks as well of the community that erected the monument nearly a century ago and has maintained it ever since. . . .

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The cross is undoubtedly a Christian symbol, but that fact should not blind us to everything else that the Bladensburg Cross has come to represent. For some, that monument is a symbolic resting place for ancestors who never returned home. For others, it is a place for the community to gather and honor all veterans and their sacrifices for our Nation. For others still, it is a historical landmark. For many of these people, destroying or defacing the Cross that has stood undisturbed for nearly a century would not be neutral and would not further the ideals of respect and tolerance embodied in the First Amendment. For all these reasons, the Cross does not offend the Constitution.

Justice [BREYER](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0254766801&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a), with whom Justice [KAGAN](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a) joins, concurring.

I have long maintained that there is no single formula for resolving Establishment Clause challenges. The Court must instead consider each case in light of the basic purposes that the Religion Clauses were meant to serve: assuring religious liberty and tolerance for all, avoiding religiously based social conflict, and maintaining that separation of church and state that allows each to flourish in its “separate spher[e].”

I agree with the Court that allowing the State of Maryland to display and maintain the Peace Cross poses no threat to those ends. The Court’s opinion eloquently explains why that is so: The Latin cross is uniquely associated with the fallen soldiers of World War I; the organizers of the Peace Cross acted with the undeniably secular motive of commemorating local soldiers; no evidence suggests that they sought to disparage or exclude any religious group; the secular values inscribed on the Cross and its place among other memorials strengthen its message of patriotism and commemoration; and, finally, the Cross has stood on the same land for 94 years, generating no controversy in the community until this lawsuit was filed. Nothing in the record suggests that the lack of public outcry “was due to a climate of intimidation.”

. . . .

Nor do I understand the Court’s opinion today to adopt a “history and tradition test” that would permit any newly constructed religious memorial on public land. The Court appropriately “looks to history for guidance,” but it upholds the constitutionality of the Peace Cross only after considering its particular historical context and its long-held place in the community, see ante, at 2089 – 2090 (majority opinion). A newer memorial, erected under different circumstances, would not necessarily be permissible under this approach.

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Justice [KAVANAUGH](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0364335801&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a), concurring.

. . . .

Consistent with the Court’s case law, the Court today applies a history and tradition test in examining and upholding the constitutionality of the Bladensburg Cross. As this case again demonstrates, this Court no longer applies the old test articulated in *Lemon v. Kurtzman* (1971). . . .

[T]he cases together lead to an overarching set of principles: If the challenged government practice is not coercive and if it (i) is rooted in history and tradition; or (ii) treats religious people, organizations, speech, or activity equally to comparable secular people, organizations, speech, or activity; or (iii) represents a permissible legislative accommodation or exemption from a generally applicable law, then there ordinarily is no Establishment Clause violation.

The practice of displaying religious memorials, particularly religious war memorials, on public land is not coercive and is rooted in history and tradition. The Bladensburg Cross does not violate the Establishment Clause.

The Bladensburg Cross commemorates soldiers who gave their lives for America in World War I. I agree with the Court that the Bladensburg Cross is constitutional. At the same time, I have deep respect for the plaintiffs’ sincere objections to seeing the cross on public land. I have great respect for the Jewish war veterans who in an amicus brief say that the cross on public land sends a message of exclusion. I recognize their sense of distress and alienation. Moreover, I fully understand the deeply religious nature of the cross. It  would demean both believers and nonbelievers to say that the cross is not religious, or not all that religious. A case like this is difficult because it represents a clash of genuine and important interests. Applying our precedents, we uphold the constitutionality of the cross. In doing so, it is appropriate to also restate this bedrock constitutional principle: All citizens are equally American, no matter what religion they are, or if they have no religion at all.

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Justice [KAGAN](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0301239401&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a), concurring in part.

[*omitted*]

Justice [THOMAS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a), concurring in the judgment.

The Establishment Clause states that “Congress shall make no law respecting \*2095 an establishment of religion.” The text and history of this Clause suggest that it should not be incorporated against the States. Even if the Clause expresses an individual right enforceable against the States, it is limited by its text to “law[s]” enacted by a legislature, so it is unclear whether the Bladensburg Cross would implicate any incorporated right. And even if it did, this religious display does not involve the type of actual legal coercion that was a hallmark of historical establishments of religion. Therefore, the Cross is clearly constitutional.

As I have explained elsewhere, the Establishment Clause resists incorporation against the States. . . .[T]he First Amendment by its terms applies only to “law[s]” enacted by “Congress.” Obviously, a memorial is not a law. And respondents have not identified any specific law they challenge as unconstitutional, either on its face or as applied. Thus, respondents could prevail on their establishment claim only if the prohibition embodied in the Establishment Clause was understood to be an individual right of citizenship that applied to more than just “law[s]” “ma[de]” by “Congress.”

Even if the Clause applied to state and local governments in some fashion, “[t]he mere presence of the monument along [respondents’] path involves no coercion and thus does not violate the Establishment Clause.” . . . At the founding, “[t]he coercion that was a hallmark of historical establishments of religion was coercion of religious orthodoxy and of financial support by force of law and threat of penalty.’ . . . Here, respondents briefly suggest that the government’s spending their tax dollars on maintaining the Bladensburg Cross represents coercion, but they have not demonstrated that maintaining a religious display on public property shares any of the historical characteristics of an establishment of religion. The local commission has not attempted to control religious doctrine or personnel, compel religious observance, single out a particular religious denomination for exclusive state subsidization, or punish dissenting worship. Instead, the commission has done something that the founding generation, as well as the generation that ratified the Fourteenth Amendment, would have found commonplace: displaying a religious symbol on government property.

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Justice [GORSUCH](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a), with whom Justice [THOMAS](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0216654601&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a) joins, concurring in the judgment.

. . . .

The Association claims that its members “regularly” come into “unwelcome direct contact” with a World War I memorial cross in Bladensburg, Maryland “while driving in the area.” . . . This “offended observer” theory of standing has no basis in law. Federal courts may decide only those cases and controversies that the Constitution and Congress have authorized them to hear. And to establish standing to sue consistent with the Constitution, a plaintiff must show: (1) injury-in-fact, (2) causation, and (3) redressability. The injury-in-fact test requires a plaintiff to prove “an invasion of a legally protected interest which is (a) concrete and particularized ... and (b) actual or imminent, not conjectural or hypothetical.”

Unsurprisingly, this Court has already rejected the notion that offense alone qualifies as a “concrete and particularized” injury sufficient to confer standing. . . . If individuals and groups could invoke the authority of a federal court to forbid what they dislike for no more reason than they dislike it, we would risk exceeding the judiciary’s limited constitutional mandate and infringing on powers committed to other branches of government. Courts would start to look more like legislatures, responding to social pressures rather than remedying concrete harms, in the process supplanting the right of the people and their elected representatives to govern themselves. . . .

. . . . In fact, this Court has already expressly rejected “offended observer” standing under the Establishment Clause itself. In *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.* (1982), the plaintiffs objected to a transfer of property from the federal government to a religious college, an action they had learned about through a news release. This Court had little trouble concluding that the plaintiffs lacked standing to challenge the transfer, explaining that “the psychological consequence presumably produced by observation of conduct with which one disagrees” is not an injury-in-fact “sufficient to confer standing under Art. III.”. . . Offended observer standing is deeply inconsistent, too, with many other longstanding principles and precedents. For example, this Court has consistently ruled that “ ‘generalized grievances’ about the conduct of Government” are insufficient to confer standing to sue. . . .

In place of [*Lemon*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1971127111&pubNum=0000780&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), . . . the plurality opinion relies on a more modest, historically sensitive approach, recognizing that “the Establishment Clause must be interpreted by reference to historical practices and understandings.” . . . I agree with all this and don’t doubt that the monument before us is constitutional in light of the nation’s traditions. But then the plurality continues on to suggest that “longstanding monuments, symbols, and practices” are “presumpt[ively]” constitutional. And about that, it’s hard not to wonder: How old must a monument, symbol, or practice be to qualify for this new presumption? . . . [W]hat matters when it comes to assessing a monument, symbol, or practice isn’t its age but its compliance with ageless principles. The Constitution’s meaning is fixed, not some good-for-this-day-only coupon, and a practice consistent with our nation’s traditions is just as permissible whether undertaken today or 94 years ago.

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In a large and diverse country, offense can be easily found. Really, most every governmental action probably offends somebody. No doubt, too, that offense can be sincere, sometimes well taken, even wise. But recourse for disagreement and offense does not lie in federal litigation. Instead, in a society that holds among its most cherished ambitions mutual respect, tolerance, self-rule, and democratic responsibility, an “offended viewer” may “avert his eyes,” or pursue a political solution. Today’s decision represents a welcome step toward restoring this Court’s recognition of these truths, and I respectfully concur in the judgment.



Justice [GINSBURG](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0224420501&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a), with whom Justice [SOTOMAYOR](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0145172701&originatingDoc=I90a2c408933011e99b14f2ee541cf11a&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I90a2c408933011e99b14f2ee541cf11a) joins, dissenting.

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Decades ago, this Court recognized that the Establishment Clause of the First Amendment to the Constitution demands governmental neutrality among religious faiths, and between religion and nonreligion. Numerous times since, the Court has reaffirmed the Constitution’s commitment to neutrality. Today the Court erodes that neutrality commitment, diminishing precedent designed to preserve individual liberty and civic harmony in favor of a “presumption of constitutionality for longstanding monuments, symbols, and practices.”

The Latin cross is the foremost symbol of the Christian faith, embodying the “central theological claim of Christianity. . . . Precisely because the cross symbolizes these sectarian beliefs, it is a common marker for the graves of Christian soldiers. For the same reason, using the cross as a war memorial does not transform it into a secular symbol. . . . Just as a Star of David is not suitable to honor Christians who died serving their country, so a cross is not suitable to honor those of other faiths who died defending their nation. . . . By maintaining the Peace Cross on a public highway, the Commission elevates Christianity over other faiths, and religion over nonreligion. Memorializing the service of American soldiers is an “admirable and unquestionably secular” objective. . . .

. . . . The Establishment Clause essentially instructs: “[T]he government may not favor one religion over another, or religion over irreligion.”. . . When the government places its “power, prestige [or] financial support ... behind a particular religious belief,” the government’s imprimatur “mak[es] adherence to [that] religion relevant ... to a person’s standing in the political community.” In cases challenging the government’s display of a religious symbol, the Court has tested fidelity to the principle of neutrality by asking whether the display has the “effect of ‘endorsing’ religion.” . . . As I see it, when a cross is displayed on public property, the government may be presumed to endorse its religious content. The venue is surely associated with the State; the symbol and its meaning are just as surely associated exclusively with Christianity. “It certainly is not common for property owners to open up their property [to] monuments that convey a message with which they do not wish to be associated.” . . . A presumption of endorsement, of course, may be overcome. A display does not run afoul of the neutrality principle if its “setting ... plausibly indicates” that the government has not sought “either to adopt [a] religious message or to urge its acceptance by others.” . . .

“For nearly two millennia,” the Latin cross has been the “defining symbol” of Christianity, evoking the foundational claims of that faith. . . . An exclusively Christian symbol, the Latin cross is not emblematic of any other faith. . . .

. . . . The Commission’s “[a]ttempts to secularize what is unquestionably a sacred [symbol] defy credibility and disserve people of faith.” The asserted commemorative meaning of the cross rests on—and is inseparable from—its Christian meaning: “the crucifixion of Jesus Christ and the redeeming benefits of his passion and death,” specifically, “the salvation of man.” . . . The cross affirms that, thanks to the soldier’s embrace of Christianity, he will be rewarded with eternal life. . . . The Peace Cross is no exception. That was evident from the start. At the dedication ceremony, the keynote speaker analogized the sacrifice of the honored soldiers to that of Jesus Christ, calling the Peace Cross “symbolic of Calvary,” where Jesus was crucified. . . .

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Reiterating its argument that the Latin cross is a “universal symbol” of World War I sacrifice, the Commission states that “40 World War I monuments ... built in the United States ... bear the shape of a cross.” This figure includes memorials that merely “incorporat[e]” a cross. Moreover, the 40 monuments compose only 4% of the “948 outdoor sculptures commemorating the First World War.” . . . Cross memorials, in short, are outliers. The overwhelming majority of World War I memorials contain no Latin cross.

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Holding the Commission’s display of the Peace Cross unconstitutional would not, as the Commission fears, “inevitably require the destruction of other cross-shaped memorials throughout the country.” When a religious symbol appears in a public cemetery—on a headstone, or as the headstone itself, or perhaps integrated into a larger memorial—the setting counters the inference that the government seeks “either to adopt the religious message or to urge its acceptance by others. . . They do not suggest governmental endorsement of those faith and beliefs.

. . . .