

No. 08-472

IN THE
Supreme Court of the United States

KEN L. SALAZAR,
SECRETARY OF THE INTERIOR, ET AL.,

Plaintiffs,

v.

FRANK BUONO,

Defendant.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF FOR JEWISH WAR VETERANS OF THE
UNITED STATES OF AMERICA, INC. AS AMICUS
CURIAE SUPPORTING RESPONDENT**

A. STEPHEN HUT, JR.

MATTHEW T. JONES
KEVIN H. MORIARTY
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 663-6000

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INTEREST OF AMICUS CURIAE¹

The Jewish War Veterans of the United States of America, Inc. (JWV), organized in 1896 by Jewish veterans of the Civil War, is the oldest active national veterans' service organization in America. Incorporated in 1924, and chartered by an act of Congress in 1983, 36 U.S.C. § 110103, JWV's objectives include "preserv[ing] the memories and records of patriotic service performed by the men and women of the Jewish faith and honor[ing] their memory," § 110103(12), and "shield[ing] from neglect the graves of our heroic dead," § 110103(13).

JWV has long taken an interest in the appropriate character of federal war memorials.

Amicus Curiae v. United States of America, 695 F. Supp. 3 (D.D.C. 1988) (invalidating display of cross on Marine Corps base under Establishment Clause). JWV is currently a plaintiff challenging the Government's display of a 43-foot-high Latin cross on Mt. Soledad in San Diego, California. *Amicus Curiae v. United States of America*, 568 F. Supp. 2d 1199 (S.D. Cal. 2008),

Amicus Curiae v. United States of America, No. 08-56415 (9th Cir. filed Aug. 21, 2008). Allen Schwartz, respondent's co-plaintiff who died during the course of this litigation, was Quartermaster of JWV Post 152. Pet. App. 124a.

¹ Pw9ad," sptyI2.0601/tp .8m.26(Co5 T5.1rt Rulhe l9w0Diego, CalTc.1oca6.1oc,6.1uns.8me 196(

INTRODUCTION

The United States Government has designated just one national memorial to honor American veterans of World War I: a Latin cross on federal land in the Mojave National Preserve. By choosing Christianity's chief symbol as the nationally endorsed means of paying tribute to World War I veterans, the Government sends the unmistakable message that it deems less worthy of honor the sacrifices of non-Christian veterans, including the 250,000 Jewish service members who answered America's call to duty in World War I. In a ruling not before the Court, the court of appeals held that the display of the Cross violates the Establishment Clause.² The Government's superficial attempt to cure its Establishment Clause violation is insufficient to remove its imprimatur from the message that non-Christian veterans are outsiders undeserving of their nation's praise.

² The district court held (Pet. App. 139a), and the court of appeals affirmed (. at 108a), that the Government's display violates the Constitution. The petition "does not present the question whether the display of a cross in connection with the war memorial at Sunrise Rock violates the Establishment Clause, but rather whether Congress's efforts to resolve any Establishment Clause problem by transferring the land to private hands may be given effect." Pet. 20 n.8. Nor could the petition present that question, as the Government is barred from relitigating that issue in this enforcement proceeding. Resp. Br. 9-10. The constitutional issue not here presented is presented on not dissimilar facts in *Am. Legion v. Am. Nat. Hist. & Pres. Serv.*, 568 F. Supp. 2d 1199 (S.D. Cal. 2008), *Am. Legion v. Nat. Hist. & Pres. Serv.*, No. 08-56415 (9th Cir. filed Aug. 21, 2008).

SUMMARY OF ARGUMENT

Congress's proposed partial transfer of the land underneath the Latin cross on Sunrise Rock in the Mojave National Preserve does not cure the Government's Establishment Clause violation. The Latin cross is a powerful Christian symbol and is not a symbol of any other religion. Even when labeled a "war memorial," the cross retains its Christian significance because its meaning—either of self-sacrifice or death—is derived from and reinforces core Christian doctrine. Any government effort to promote display of the preeminent symbol of Christianity, even when labeled a "war memorial," bespeaks a religious purpose. In the 2004 Act, the Government acted with a plainly religious purpose by attempting to preserve the display of the Sunrise Rock Cross. That purpose condemns the proposed transfer as inadequate to remedy the Establishment Clause violation.

Under the 2004 Act, the Government's continued control over the Cross and surrounding property would sustain its endorsement of religion. Rather than divesting itself of the display, Congress insisted on a reversionary interest and easement, thus retaining partial ownership. Moreover, by transferring an acre surrounded on all sides by a vast national preserve and labeling that property a national memorial, the Government would retain strong regulatory authority over the land on which the Cross sits. Finally, through the reversionary clause and a criminal prohibition on injuring veterans' memorials, the Government would all but guarantee preservation of the status quo: the symbol of Christianity standing in the middle of the Mojave National Preserve. This limited transfer does not adequately disentangle the Government from the Cross's religious message.

Finally, the transfer does not undo Congress's 2002 designation of the Sunrise Rock Cross as a national World War I memorial. By labeling the Cross as our sole national memorial to veterans of World War I, the Government ignores and denigrates the service of non-Christian veterans of that war. The national-memorial designation perpetuates the Government's endorsement of religion by giving the Government enhanced regulatory powers over the display, conveying the Government's ongoing support for the Cross's message. More importantly, the national-memorial designation is the Government's single most effective means of associating itself with a memorial's message. By selecting the preeminent symbol of Christianity to commemorate World War I veterans, the Government has implied that only Christian veterans are worthy to be honored. The Government's formalistic attempt to cure its Establishment Clause violation while all but guaranteeing the Cross's continued display is inadequate given the Government's ongoing proclamation that the Christian Cross represents all veterans of the First World War.

underneath it to a Veterans of Foreign Wars (VFW)
post. Department of Defense Appropriations Act,

with Catholicism, and “[c]rosses can be now found on nearly every Protestant church in America, from the tops of spires down to decorative cornerstones.”⁵ Inside those churches, “[p]lain and decorated crosses hang above Communion tables, glow in stained-glass windows, trim ministers’ vestments, adorn Communion vessels, and mark gravesites in surrounding yards.”⁶ The cross is used during Christian worship in liturgical processions or through the “sign of the cross” made by clergy to bless certain people and objects.⁷ Outside church, many Christians rely on the cross as a symbol of inspiration, displaying the cross in their homes or on chains around their necks.⁸

The profound religious significance of the cross is so apparent that in *Allegheny University of Health Sciences v. Greater Pittsburgh*, 492 U.S. 573 (1989), all nine Justices of this Court joined opinions using the Latin cross as the prototypical example of an unconstitutional religious display.⁹ This Court had noted on an earlier occasion that the “church

⁵ *Smith*, 121 F.3d at 54 (2006).

⁶ .

⁷ *Quill*, 121 F.3d at 18, 35-36 & n.28 (Pinson ed., 2009).

⁸ . at 36.

⁹ *Allegheny University of Health Sciences v. Greater Pittsburgh*, 492 U.S. at 599 (plurality opinion) (adornments could not “negate the endorsement of Christianity conveyed by the cross”); . at 629 (O’Connor, J., concurring); . at 661 (Kennedy, J., concurring in the judgment in part and dissenting in part, joined by Rehnquist, C.J., White and Scalia, JJ.) (“[Establishment] Clause forbids a city to permit the permanent erection of a large Latin cross on the roof of city hall”).

The Government makes no effort to explain how the cross—the preeminent symbol of Christianity—can honor America’s veterans, perhaps because any articulation would reveal its Christian roots. Some amici, including Thomas More Law Center, contend that the cross is a “universal symbol of self-sacrifice,” such that “in the context of a war veterans’ memorial, the cross is a symbol of the ultimate sacrifice made for one’s country.” Br. of Amici Curiae Thomas More Law Center et al. (TMLC Br.) 16; Br. of Amicus Curiae American Legion Department of California (Legion Br.) 13 (“the cross is a uniquely transcendent symbol representing the decision to lay down one’s life for the good of others”). But this theory honors war dead by comparing them to Jesus: Just as Jesus shed his blood for the sinful world, America’s war dead shed blood for the nation. This analogy works only for those who embrace the doctrine of atonement through Christ’s crucifixion, and the comparison intended to honor veterans’ sacrifices simultaneously reinforces Christian beliefs about the nobility of Jesus’s crucifixion through association with brave Americans. Such a message violates the Establishment Clause command that Government

ceased's Christian faith. In "a custom ... almost as ancient as the Christian religion itself," Christians mark gravesites with the cross "to signify ... the resting place of a Christian" in a tradition that "remains the standard form of ritual Christian grave-practice in many parts of the world."¹¹

Non-Christians do not mark gravesites with the cross, either generally or in the military setting. For instance, the U.S. Department of Veterans Affairs (VA) provides rectangular memorial headstones for the graves of deceased veterans.¹² Recognizing that the cross cannot adequately represent all veterans, the VA permits a veteran's family to honor the veteran's faith by selecting one of 39 "emblems of belief" for inclusion on the headstone.¹³ Among these emblems are fifteen different crosses, including the unadorned Latin cross that the VA labels the "Christian Cross." The VA offers many other emblems to mark the graves of veter-

¹¹ Sullivan, *τ* 197 (2005) (quoting report of Dr. John McGuckin in *τ* v. *τ* *τ*, 64 F. Supp. 2d 1272 (S.D. Fla. 1999)).

¹² U.S. Dep't of Veterans Affairs, *τ* - *τ*, *k*, at <http://www.cem.va.gov/hm/hmelig.asp> (last updated June 8, 2009).

¹³ U.S. Dep't of Veterans Affairs, *τ*, *τ*, *τ*, *τ*, *τ*, *k*, at <http://www.cem.va.gov/hm/hmemb.asp> (last updated Mar. 12, 2009). Crosses chosen by veterans and their families to mark veterans' graves do not run afoul of the Establishment Clause because "there is a crucial difference between *τ* speech endorsing religion, which the Establishment Clause forbids, and *τ* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *τ* v. *τ*, 496 U.S. 226, 250 (1990) (O'Connor, J., concurring).

ans of the Jewish, Muslim, Hindu, Sikh, Buddhist, and other faiths. These options reflect the VA's conclusion that the cross is not a universal grave marker because it is not a secular symbol of death or sacrifice, but instead conveys the message that the veteran resting beneath was Christian.

The understanding that the Christian cross does not represent non-Christian veterans is also held by the American Battle Monuments Commission, which maintains overseas military cemeteries. During World War I, the War Department determined that the graves of Jewish soldiers who had died in battle would be marked with the Star of David.

See N.Y. Times, July 25, 1918, at 22. Major General Crosby explained in a 1930 address that “[m]any of our heroic dead lie in Flanders Field, Suresnes, Belleau Wood, and elsewhere. The star of David is mingled with the cross in beautiful and everlasting marble. As they lived together, fought together, so they lie buried, side by side.” 72 Cong. Rec. 11064 (June 17, 1930). To this day, the graves of Jewish soldiers are marked with the Star of David, not a Christian cross, in American military cemeteries overseas.¹⁴

Nor are crosses so entrenched or ubiquitous as war memorials that they can avoid “convey[ing] a message of endorsement of particular religious beliefs” “despite their religious roots.” *See* *United States v. Aronson*, 492 U.S. at 630-631 (O’Connor, J., concurring in part and concurring in the judgment)). Contrary to the claims by amici supporting

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Amici further assert that the Latin cross is “typical” in war memorials (VFW Br. 10) and that cross

C.

Government action rarely bespeaks a religious purpose more plainly than when the government promotes the display of a symbol as profoundly religious as the Latin cross. In *American Legion v. American Council on Education*, this Court so easily found religious purpose in part because “the place of the Bible as an instrument of religion cannot be gainsaid.” 374 U.S. at 224. Likewise, when the government attempts to perpetuate the display of the Latin cross, indisputably an instrument of religion, the attempt is patently religious regardless of the absence of statutory text or legislative history to confirm that religious objective.

The religious purpose of government efforts to perpetuate the display of the Latin cross is obvious even when the cross is labeled a “war memorial.” The asserted secular purpose of such displays—honoring veterans—is empty because not all veterans are Christians. *American Legion v. American Council on Education*, 374 U.S. at 224 (plainly religious character of Bible not “consistent with the contention that the Bible is here used ... as an instrument for non-religious moral inspiration”). Approximately one million Jews served in America’s armed services during

similarly motivated law. The 2004 Act outlining the transfer of land to the VFW has a religious purpose because its central object is to ensure that the Sunrise Rock Cross remains standing. According to the Government (Br. 36), the purpose of the 2004 Act is to “preserv[e] a national memorial to fallen service members.” But this asserted purpose—as just explained—makes no sense because the statute merely preserves a Latin cross, which cannot serve as a secular memorial to service members. In all but the rarest of circumstances, not present here, government action to encourage the display of Christianity’s symbol must be deemed to have a religious purpose.

While a government’s avowed secular purpose is entitled to some deference, it is “the duty of the courts to distinguish a sham secular purpose from a sincere one,” *United States v. American Legion*, 530 U.S. 290, 308 (2000) (internal quotations omitted and alterations in original incorporated); this Court “ha[s] not made the purpose test a pushover for any secular claim,” *United States v. American Legion*, 545 U.S. at 864. The purpose test would have “no real bite” if courts simply rolled over whenever lawmakers offered some barely plausible explanation, “given the ease of finding some secular purpose for almost any government action.” *United States v. American Legion*, at 865 n.13. Where, as here, there is no logical connection between the asserted purpose (honoring veterans of all religions) and the goal (displaying the symbol of one religion), the asserted purpose must be rejected.

Beyond pleading for deference, the Government seeks to blindfold the reasonable observer, whose knowledge and perception are the Establishment Clause touchstones for determining whether a government’s action endorses religion. *United States v. American Legion*, 545 U.S. at 866; *United States v. American Legion*, 530 U.S. at 308. The Gov-

ernment contends that Congress's 2001 enactment, which prohibited the use of federal funds to remove the Cross (Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, App. D, § 133, 114 Stat. 2763, 2763A-230), and the 2002 Act are irrelevant to understanding the 2004 Act because "[t]hose two statutes ... predate the district court's permanent injunction preventing display of the cross." Pet. Br. 32. This contention revives the argument squarely rejected in : "that purpose ... should be inferred, if at all, only from the latest news about the last in a series of governmental actions, however close they may all be in time and subject." 545 U.S. at 866. The artificial line drawn by the Government unrealistically suggests that Congress (1) only learned of the Cross display's constitutional infirmity once the district court entered the injunction; or (2) suddenly abandoned its theretofore unconstitutional efforts to preserve the Cross after the court entered the injunction.

Neither theory is plausible. The court of appeals rightly recognized that the 2001 and 2002 enactments were just "first step[s] in forestalling inevitable en-

tain the cross” (Br. 33). The Cross display is surely “longstanding”; its “preservation” requires that it continue to stand, not be replaced by something new. Yet to save the 2004 Act, the Government adopts a fanciful interpretation that eviscerates Congress’s goal of preserving the display of the Cross.

The 2004 Act conveys to the VFW “a parcel of real property consisting of approximately one acre in the Mojave National Preserve and designated (by [the 2002 Act]) as a national memorial commemorating United States participation in World War I and honoring the American veterans of that war.” 2004 Act § 8121(a). That conveyance is “subject to the condition that the recipient maintain the conveyed property as a memorial commemorating United States participation in World War I and honoring the American veterans of that war.” . § 8121(e). The Government contrasts the 2002 Act, which designates both the “five-foot-tall white cross” and “a limited amount of adjoining Preserve property” as a memorial, with the 2004 Act, which requires only that “the conveyed property” be maintained as a memorial. Br. 33. Under the Government’s interpretation, because the “2004 Act does not mention a cross,” the Cross is not part of “the conveyed property” that the legislation requires to be maintained as a memorial. .

This reading compels the absurd conclusion that the conveyance to the VFW includes only the land underneath the Cross while the Government retains ownership of the Cross itself. It further ignores the fact that the Cross, which has been bolted into the rock (Pet. App. 56a), is a fixture that is by definition part of the conveyed real property. 35A Am. Jur. 2d -
 τ § 3 (2001) (“A fixture is owned by the owner of the land upon which the structure is permanently af-

fixed[.]”). The Government’s odd interpretation would mean that Congress carried out its Government-proclaimed goal of “preserving a national memorial to fallen service members” (Pet. Br. 36) by writing a law that did nothing to preserve that memorial. Finally, the Government’s construction would do nothing to remedy the Establishment Clause violation, since the continued display of the Cross would be correctly attributable to its owner, the United States.

II. THE GOVERNMENT EXERCISES ONGOING CONTROL OVER THE CROSS AND S

even require the continued display of the Cross, Part II.B).

- The location of the transferred land entirely within a national preserve subjects it to heightened government regulation.
- The National Park Service (NPS) is responsible for the “supervision, management and control” of the national memorial at Sunrise Rock.
- Congress required a governmental easement for the purpose of installing a plaque.

These provisions perpetuate the Government’s control and would cause the objective observer to perceive continued governmental endorsement of the Cross.

, 530 U.S. at 308.

1. The Government’s Reversionary Interest Underscores, and Does Not Remedy, Its Endorsement

When the Government sought to transfer the Cross and land to the VFW, it denied the VFW one of the fundamental features of ownership: the right to use the property as desired. Instead, the Government obligated the VFW to continue a single, narrow use by preserving for the Government a reversionary interest

pose of a golf course.” . at 320-321. The Fifth Circuit “conclude[d] that the inclusion of the reversionary clause in these conveyances constituted the purchasers of the two golf courses state agents.” . at 323. The Government’s reversionary clause here is identical in form to that condemned in *τ* , .¹⁷ The reversionary clauses in both cases mandate the continued operation of the property in the very same way that, while

of a reverter clause was “itself sufficient to constitute ‘state action.’” . at 714 (citation omitted).¹⁸

As in *τ*, and *τ*, by requiring that the VFW continue to use the transferred land as a memorial, the Government has effected ongoing control. There is now an “absolute obligation on the part of the [VFW] that [it] immediately, presently and always use the ... property for [memorial] purposes, and no other.”

τ, 304 F.2d at 322. Because the Government has so forcefully dictated how the property must be used, it continues to control such use.

2. The Government’s Regulatory Authority Over Inholdings Underscores, and Does Not Remedy, Its Endorsement

The Sun

4.

“ 2002 Act § 8137(a). When Congress attempted to transfer the property to the VFW, it included a reversionary clause conditioned on the maintenance of a memorial described in the following terms:

REVERSIONARY CLAUSE. — The conveyance under subsection (a) shall be subject to the condition that the recipient maintain the conveyed property as a

war memorial. If the Secretary determines that the conveyed property is no longer being maintained as a war memorial, the property shall revert to the ownership of the United States.

2004 Act § 8121(e). The court of appeals correctly/§

in the same context). Thus, where Congress used the same precise phrase to describe the memorial in both the national-memorial designation and the reversionary clause, it was referring to the same memorial.

Second, the reversionary clause requires the VFW to “maintain” the memorial. As this Court has explained, “[t]he ordinary meaning of the word ‘maintain’ is ‘to keep in existence or continuance; preserve; retain.’” *United States v. F.V.W. Post*, 534 U.S. 426, 433 (2002) (quoting *Black’s Law Dictionary*, 1160 (2d ed. 1987)). This ordinary meaning would be defied by a construction that permits the VFW to dismantle the present memorial and to create a new one. Because Congress required the VFW to “maintain” the property as a memorial, not only to “use” the property as such, the clause must be read to require the VFW to maintain the Cross.

Third, as discussed in Part I.C.2, the “conveyed property” protected by the reversionary clause must be read to include the Cross, not just the land beneath it. Any other reading would mean that Congress’s “conveyance” included only the land adjoining the Cross, and that the Government retained ownership of the Cross itself. Because the VFW is required to maintain the conveyed property—including the Cross—its removal or destruction of the Cross would trigger the reversionary clause.

Thus, the reversionary interest in this case is conditioned on continuation of exactly the same activity deemed an Establishment Cause violation when the Government held the property. As a result, “an objective observer, acquainted with the text, legislative history, and implementation of the statute, would perceive

it as a state endorsement of” religion. , *τ* , 530 U.S. at 308.²²

C. Congress Preserves the Cross Display With Threats of Civil and Criminal Consequences

The Government has created two mechanisms triggered by the removal of the Cross that, if enforced, would result in civil and criminal penalties for the VFW. First, the reversionary clause discussed in Part II.B, , if eN675 TD0 Tc.m 0

The Government concedes that the reversionary clause could be read to permit the Secretary to seize the acre at Sunrise Rock if the VFW removes the Cross, but argues that Secretary Salazar or some future Secretary could use his discretion under the clause to avoid violating the Constitution. Br. 43 (“This Court should presume that the Secretary will exercise his discretion consistently with the Establishment Clause.”). As a practical matter, however, the risk that the Secretary might do otherwise sharply circumscribes the VFW’s ability to end the Cross display. Rather than trusting in the discretion of the Secretary to allow the VFW to retain the land even if the organization removes the Cross that Congress has long fought to protect, practically speaking, the VFW will never remove the Cross to avoid the possibility of reversion.

Moreover, the Government’s approach would prevent the judiciary from invalidating unconstitutional laws that require implementation by a public official. For example, criminal laws, which are enforced at the discretion of prosecutors sworn to uphold the Constitution, could not be invalidated. Citing *Lee v. Weisman*, 505 U.S. 577 (2002), & *American Legion v. American Legion*, 541 U.S. 157 (2004), the Government posits (Br. 43) that an endorsement of religion by Congress is not unconstitutional if an executive branch official may act to minimize or eliminate the endorsement. *American Legion* does not mandate anything like the abdication of judicial review the Government proposes. 541 U.S. at 174 (requiring evidence of public interest related to government misfeasance to overcome privacy interest in FOIA, given presumption of no misfeasance; “presumption ... less a rule of evidence than a general working principle”). The discretion granted to the Secretary is not a

vice of non-Christian veterans, including the 250,000 Jews who fought for the United States in World War I.²⁴ Rather than honoring non-Christian veterans, the Government's sponsorship of the Cross sends the message to non-Christian veterans "that they are outsiders, not full members of the political community."²⁵ Thus, even if the transfer effected by the 2004 Act satisfactorily cured the Establishment Clause violation—and for the reasons set out in Parts I and II, it does not—the 2002 designation alone unconstitutionally places the Government's imprimatur on a religious symbol.

Congress has in public laws declared approximately fifty sites that commemorate historic persons or events as "national memorials." Some—like Mount Rushmore or the Washington Monument—are familiar, while others—like the Astronauts Memorial at Florida's JFK Space Center or New Orleans' Buffalo Soldiers Memorial—are less well known. The vast majority of these memorials, including the "White Cross World War I

als, including the Vietnam Veterans Memorial and the U.S. Marine Corps Memorial, relate to the commemoration of war or veterans.²⁸ The Sunrise Rock Cross is the only national memorial dedicated to honoring veterans of the First World War.²⁹

The Government asserts that Congress’s designation of the Cross as our national World War I memorial “has no legal significance.” Br. 41. By this, the Government apparently means that the designation “does not transfer any regulatory authority over private property to the government.” . As discussed in Part II.A.3, , this assertion is incorrect. The statutory

tional monuments, including category of “national memorials”). As one former NPS official wrote, “uniformity and consistency are not characteristics of park system nomenclature.” Rettie, -
 τ , κ τ 40 (1995). Our park system has the “most complex, the most carefully articulated, and thus the most specific system in the world,” with twenty-one types of units including national parks, seashores, monuments, and memorials. Winks,
 τ , κ / Α τ 1916: Α , τ τ , τ ,
 74 Denv. U. L. Rev. 575, 576 (1997). “To address the confusion cre-

designation of the Cross as a national memorial makes it a unit of the national park system over which the Secretary, through the NPS, has the statutory powers of “supervision, management, and control.” 16 U.S.C. § 2.

Perhaps more importantly, even if the Government had no enhanced regulatory authority over the Sunrise Rock Cross, observers are likely to attribute the Cross’s message to the Government because of the act of designation, without more. In *United States v. Saxton*, 129 S. Ct. 1125 (2009), this Court explained that when the government accepts donations of monuments from private entities for display on government property, observers of those monuments “routinely—and reasonably—interpret them as conveying some message on the property owner’s behalf,” because it is “not common for property owners to open up their property for the installation of permanent monuments that convey a message with which they do not wish to be associated.” *Saxton*, at 1133. The Court noted that governments “exercise[] selectivity,” “tak[ing] some care” to “select the monuments that portray what they view as appropriate.” *Saxton*. Because of that selectivity, “[t]he monuments that are accepted ... are meant to convey and have the effect of conveying a government message.” *Saxton*.

Just as privately donated monuments on public property convey a government message, so do statutorily designated national memorials. Observers reasonably interpret national memorials as conveying federal endorsement because the Government does not designate as national memorials those “monuments that convey a message with which [it] do[es] not wish to be associated.” *United States v. Saxton*, 129 S. Ct. at 1133. To the contrary, national-memorial designation is Con-

gress's most straightforward means of associating with a monument's message.

Indeed, the Government's association with the message of a national memorial is much stronger than its association with the message of a privately donated monument. National-memorial designation is far more selective, as Congress has selected only fifty sites as memorials from the innumerable possibilities. And while a donated monument is accepted only in response to a private offer, the national-memorial designation is initiated by the Government, affirmatively demonstrating the strength of governmental support for the memorial's message.

The United States Government has designated only one memorial to honor the four million American veterans of World War I: the Sunrise Rock Cross. That unadorned symbol of Christ's crucifixion and resurrection has been established by the federal government as our national means of honoring the American veterans of that war. By selecting the preeminent symbol of Christianity to commemorate World War I veterans, the Government has implied that only Christian veterans are worthy to be honored. Yet in World War I, more than 250,000 Jews answered America's call to action: more than 3,500 were killed; more than 12,000 were wounded; and more than 1,100 received decorations for bravery. Fredman & Falk, n.24, at 38-40. It denigrates their service and sacrifice, and

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

A. STEPHEN HUT, JR.

MATTHEW T. JONES
KEVIN H. MORIARTY
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 663-6000

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