



STUDY GUIDE

You Can't Be Free Without This

KEY TERMS: religious freedom government edicts Bill of Rights
totalitarian Founders tyranny

NOTE-TAKING COLUMN: Complete this section <u>during</u> the video. Include definitions and key terms.	CUE COLUMN: Complete this section <u>after</u> the video.
<p>1. What was central to the founding of the United States?</p> <p>2. To the Founders, religious liberty was tantamount to what?</p> <p>3. What is the totalitarian ‘tell?’</p>	<p>1. Why was religious freedom so important to the Founders of the United States?</p> <p>2. Why and in what ways is religious freedom in peril?</p>

Discussion & Review Questions

1. At the beginning of the video, Mr. Shackelford asks, “What is religious freedom? Why is it important? And why is it now under threat?” How would you answer each of these questions?
2. After noting that American society is moving from freedom *of* religion towards freedom *from* religion, Mr. Shackelford states, “That’s not what any American should wish for. Here’s why: because when they come for your religious freedom, they’re coming for all your freedom. It’s the totalitarian ‘tell.’ The giveaway. This is what the Founders understood and why they were so insistent that religious liberty be in the Constitution. To them, freedom of liberty was tantamount to freedom of thought. If you aren’t free to think as you wish, you can’t claim to be free.” What do you think Mr. Shackelford means when he says that they are coming for all your freedom? Explain. What do you think Mr. Shackelford means by ‘totalitarian tell?’ Explain. Do you agree with the Founders notion that you can’t truly be free if you cannot think the way that you want to? Why or why not?
3. Further along in the video, Mr. Shackelford asks, “Why do repressive governments fear religious freedom? Because it challenges the authority of the state more than any other freedom. People who adhere to a religion believe there is something higher than the state, and no repressive government can tolerate such a belief. That makes religion the first target of those who want ever more power- and ever more control over its citizens. That’s why, even if you’re not religious, if you care about freedom, you should care deeply about religious liberty.” Considering that the U.S. government is targeting religion more and more, do you think the U.S. government is becoming repressive? Why or why not? Why do you think that the Leftists in governments across the U.S. want ever more control over its citizens? Explain.
4. Mr. Shackelford goes on to point out that, “My job is to protect religious liberty. And, let me tell you, the trends are troubling. Eight years ago, my case load was 47; last year it was over 300.” What do you think accounts for the dramatically increased caseload, and why is it so troubling? Explain.
5. At the end of the video, Mr. Shackelford concludes that, “America is also still standing. But it won’t be for much longer, not as the free country the Founders envisioned, if we don’t take threats to religious freedom seriously. The great historian of post-revolutionary America, Alexis de Tocqueville, understood this very well. ‘When...men attack religious beliefs, they are following their emotions not their interests. Tyranny may be able to do without faith, but freedom cannot.’” What do you think Mr. Shackelford means when he states that America won’t be ‘standing for much longer’ if we don’t take threats to religious freedom seriously? In what ways can we ‘take threats to religious freedom seriously?’ What do you think de Tocqueville meant in his statement that Tyranny may be able to do without faith, but freedom cannot? Explain.

Extend the Learning:

Case Study American Legion v. American Humanist Association

INSTRUCTIONS: Read the article “Supreme Court rules that Maryland ‘Peace Cross’ honoring military dead may remain on public land,” then answer the questions that follow.

1. What argument did the Supreme Court reject in its ruling about the World War I tribute to the war dead? What was the vote count in the case? Where does the Bladensburg Peace Cross stand? What did Justice Alito say about the case in his opinion? What did Justice Breyer say about the case? What did Justice Ginsburg state about the case in her dissent? When was the Peace Cross built, and under what conditions? Who owns and is responsible for the cross now? What is the ‘Lemon Test?’ What was a more relevant issue concerning monuments, according to Justice Alito? What had a lower court ruled and suggested in the case in regards to what to do with the cross? What did Justice Breyer say in regards to how the case measured up to the First Amendment? What did Justice Kagan say about her approach to ruling on the Establishment Clause in the First Amendment? What was Justice Thomas’ interpretation of the Establishment Clause? On what grounds would Justice Gorsuch have dismissed the case? What did Justice Kavanaugh say about the case? Who is Takisha James, and what did she reveal about the city’s take on the matter?
2. Do you think that a religious symbol on public property is necessarily an endorsement of a religion by the government? Why or why not? If you were on the U.S. Supreme Court in this case, how would you have ruled, and why? What factors do you think were most important to the justices when deciding this case? Explain.
3. What else do you think can be done to preserve religious liberty?

https://www.washingtonpost.com/politics/courts_law/supreme-court-says-maryland-peace-cross-honoring-military-dead-does-not-constitute-government-endorsement-of-religion/2019/06/20/a63c4c24-9365-11e9-b570-6416efdc0803_story.html

Supreme Court rules that Maryland ‘Peace Cross’ honoring military dead may remain on public land



Supreme Court allows Maryland ‘Peace Cross’ in church and state test case

Supreme Court allows Maryland ‘Peace Cross’ in church and state test case
The Supreme Court ruled June 20 that a 40-foot cross erected as a tribute to war dead may continue to stand on public land in Maryland. (Video: Luis Velarde/Photo: Michael Robinson Chávez/The Washington Post)

By Robert Barnes
June 20, 2019 at 3:38 p.m. PDT

A 40-foot cross erected as a tribute to World War I dead may continue to stand on public land in Maryland, the Supreme Court ruled Thursday, rejecting arguments that it represented an unconstitutional endorsement of religion.

The vote was 7 to 2 for the Bladensburg Peace Cross, which towers over a busy intersection on a highway just outside the District, in Prince George’s County.

But the case's resolution prompted an outpouring of individual opinions as the court struggled to explain what should be done with displays on government property that feature religious imagery.

Justice Samuel A. Alito Jr. wrote the main opinion and said history and tradition must be taken into account when judging modern objections to monuments that were built with a secular purpose or have come to take on a new meaning.



Justice Samuel A. Alito Jr. wrote the main opinion, saying history and tradition must be considered when judging modern objections to monuments on public land. (Jim Young/Reuters)

“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,” Alito wrote. “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.”

Alito was joined in deciding that the cross may remain by Chief Justice John G. Roberts Jr. and Justices Clarence Thomas, Stephen G. Breyer, Elena Kagan, Neil M. Gorsuch and Brett M. Kavanaugh.

Alito wrote that “retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones. The passage of time gives rise to a strong presumption of constitutionality.”

Breyer wrote to emphasize the flip side of that equation. “I see no reason to order *this* cross torn down simply because *other* crosses would raise constitutional concerns,” Breyer wrote in his

concurring opinion, joined by Kagan. But he noted, “a newer memorial, erected under different circumstances, would not necessarily be permissible under this approach.”

Justices Ruth Bader Ginsburg and Sonia Sotomayor dissented, and Ginsburg emphasized her strong disagreement by reading part of her dissent from the bench. She said the court’s decision to maintain the cross-shaped monument on public land “erodes” the constitutional principle that “demands governmental neutrality.”

By honoring World War I service members with a cross-shaped memorial, the state of Maryland, she said, “places Christianity above other faiths” and sends the message to people of other faiths that “they are outsiders.”

“Making a Latin cross a war memorial does not make the cross secular. Quite the contrary, the image of the cross makes the war memorial sectarian. The Peace Cross is no exception,” Ginsburg said.

The Bladensburg Peace Cross, made of granite and cement, was built in 1925 and paid for by local families, businesses and the American Legion to honor 49 World War I veterans from Prince George’s County. But the 40-foot cross sits on a now-busy highway median owned since 1961 by a state commission that pays for its maintenance and upkeep.

The legal challenge began with the American Humanist Association, a nonprofit atheist organization that has filed similar lawsuits throughout the country.

The fight to retain the cross united often-warring Maryland officials, and they reacted enthusiastically to Thursday’s ruling. It “ensures that this memorial — a dignified tribute to those who came before us and made the ultimate sacrifice — will stand tall and proud for the ages,” Maryland Gov. Larry Hogan (R) said in a statement.

Elizabeth M. Hewlett, who chairs the Maryland-National Capital Park and Planning Commission, which owns the median on which the Peace Cross sits, said the commission plans to make repairs to the crumbling monument.

“Now that the status of the Peace Cross has been clarified, we can move forward with a plan and then secure cost estimates,” Hewlett said.

Seven of the nine justices wrote separately in the case, but there was no dramatic change in the court’s jurisprudence in the majority opinion from Alito. Some have wanted the court to junk the “Lemon test,” from a 1971 decision that sets out standards for courts to decide when a government action crosses the line to violate the Constitution’s ban on establishment of religion.

That didn’t happen, but Alito wrote that the 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.”

More relevant, Alito said, are issues such as whether a monument over time has taken on new meaning. He discussed at length how the April fire at Notre Dame Cathedral in Paris had shown that its value as a place of worship had “broadened” to become part “of the very idea of Paris and France.”

Also, when something has become a part of the landscape, he wrote, “tearing down monuments with religious symbolism and scrubbing away any reference to the divine will strike many as aggressively hostile to religion.”

It was clear at oral arguments that a majority of the justices were not eager to follow a lower court’s suggestion that the cross be moved or shed its arms to more resemble an obelisk.

Monica Miller, who argued the case for the American Humanist Association, said she was grateful the court avoided a more sweeping declaration that would have covered other public monuments and displays with religious features.

Her opponents were “hoping for a complete upheaval of the separation of church and state,” Miller said in a statement. “Fortunately, the Lemon test and decades of precedent have not been overruled in the vast majority of relevant instances.”

The liberal justices who joined in the judgment praised Alito’s ruling as eloquent and sensitive to the nation’s religious pluralism.

Breyer said he was persuaded by the specifics of the case: that crosses are a specific symbol of World War I sacrifice and that the Bladensburg Cross had stood for nearly a century without controversy.

“The Peace Cross cannot reasonably be understood as ‘a government effort to favor a particular religious sect’ or to ‘promote religion over nonreligion,’ ” he wrote, repeating earlier standards set by the court.

Kagan said she declined to join all parts of Alito’s ruling “out of perhaps an excess of caution.”

“Although I too look to history for guidance, I prefer at least for now to do so case-by-case, rather than to sign on to any broader statements about history’s role in Establishment Clause analysis,” she wrote.

Some of the court’s conservatives would have gone further in changing how the court considers such controversies.

Thomas repeated his view that the First Amendment’s words that “Congress shall make no law respecting an establishment of religion” means that states are more free to do what they want.

Gorsuch would have dismissed the case. The challenge was brought by those who said they were offended by the sight of the monument. “This ‘offended observer’ theory of standing has no

basis in law,” he wrote. Ginsburg said she found that “startling” in view of the many religious-display cases brought on those grounds.

Kavanaugh wrote separately to say that the Lemon test “is not good law.” He also said he understood Jewish war veterans who in an amicus brief said the erection of a cross to denote sacrifice sends a message of exclusion.

“It would demean both believers and nonbelievers to say that the cross is not religious, or not all that religious,” he wrote. “A case like this is difficult because it represents a clash of genuine and important interests.”

If divisive at the court, not so in Maryland, where Democrats such as Attorney General Brian E. Frosh and Senate President Thomas V. Mike Miller Jr. joined Republican Hogan in urging the court to allow the cross to remain.

Bladensburg Mayor Takisha James, a Democrat, said she had received a deluge of emails and texts from excited residents.

“The community is overwhelmed with happiness,” she said. “We look at it simply as a memorial to Prince Georgians who fought on behalf of our community.”

The case is *American Legion v. American Humanist Association*.

Ann E. Marimow and Rachel Chason contributed to this report.



Robert Barnes

Robert Barnes has been a Washington Post reporter and editor since 1987. He joined The Post to cover Maryland politics, and he has served in various editing positions, including metropolitan editor and national political editor. He has covered the Supreme Court since November 2006.



QUIZ

You Can't Be Free Without This

- 1. What was central to the founding of the United States of America?**
 - a. the idea that power should be centralized in the federal government
 - b. the search for religious freedom
 - c. the expansion of the populace towards the West
 - d. the economic dependence on Britain

- 2. When they come for your religious freedom, they're coming for all your freedom.**
 - a. True
 - b. False

- 3. The Founders put religious liberty in the Constitution because to them religious liberty was tantamount to _____.**
 - a. the new government succeeding
 - b. being British
 - c. freedom of thought
 - d. bringing organized religion to the New World

- 4. To this day, who controls all religious life in China?**
 - a. the Chinese citizens
 - b. Chairman Mao
 - c. Buddhist monks
 - d. the Chinese Communist government

- 5. What compromise did one judge in the 'peace cross' case in Maryland offer in order to make the cross 'less offensive?'**
 - a. paint the cross to 'blend in' with the background
 - b. drape a BLM banner across the front
 - c. permanently attach a large, inflatable Santa Claus to it
 - d. chop the arms off of the cross



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