

No. 15-2597

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**United States Court of Appeals for the Fourth Circuit**

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AMERICAN HUMANIST ASSOCIATION, ET AL.,  
*Plaintiffs-Appellants,*

v.

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,  
*Defendant-Appellee,*

&

THE AMERICAN LEGION, ET AL.,  
*Intervenors/Defendants-Appellees*

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On Appeal from the United States District Court for the  
District of Maryland, Greenbelt Division, Deborah K. Chasanow  
Civil No. 14-550

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**MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE*  
OF THE FOUNDATION FOR MORAL LAW  
IN SUPPORT OF PETITIONS FOR REHEARING EN BANC**

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**MOTION OF FOUNDATION FOR MORAL LAW  
FOR LEAVE TO FILE AMICUS BRIEF  
IN SUPPORT OF PETITIONS FOR REHEARING EN BANC**

The Foundation for Moral Law (“the Foundation”) ([www.morallaw.org](http://www.morallaw.org)) respectfully moves for leave of Court to file the accompanying amicus brief in support of the petitions for rehearing *en banc*. Rule 29(b)(3), Fed. R. App. P.

The Foundation is a national public-interest organization based in Montgomery, Alabama, dedicated to the strict interpretation of the Constitution as written and intended by its Framers and the right to acknowledge God in the public arena.

The Foundation has an interest in this case because it believes that the panel opinion departs from a proper understanding of the Establishment Clause and thereby endangers historical markers that include religious iconography. The matters brought to the Court’s attention in the accompanying brief do not duplicate the parties’ arguments and provide relevant information for the Court on the historical context of the Latin cross.

For these reasons, The Foundation for Moral Law requests that the Court grant leave to file the accompanying amicus brief.

Respectfully submitted,

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November 8, 2017

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

*Amicus Curiae* Foundation for Moral Law (“the Foundation”), is a national public-interest organization based in Montgomery, Alabama, dedicated to the defense of religious liberty and the strict interpretation of the Constitution as written and intended by its Framers. The Foundation has an interest in this case because it believes that the panel opinion departs from a proper understanding of the Establishment Clause.

### CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1, Fed. R. App. P., the Foundation hereby discloses that it is a nonprofit corporation and that it has no parent corporations. Because the Foundation is a nonprofit corporation, no corporation holds 10% or more of an ownership interest in the Foundation.

### SUMMARY OF ARGUMENT

Believing that the Constitution should be interpreted strictly according to its plain meaning as understood by its Framers, the Foundation fully endorses the legal and constitutional arguments of the defendants and the intervenors. Rather than duplicating those arguments, the Foundation will point out certain critical

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<sup>1</sup> All parties have consented to the filing of this brief. Rule 29(a)(2), Fed. R. App. P. No party or party’s counsel authored this brief in whole or in part, and no party or person other than amicus Foundation for Moral Law contributed money towards its preparation or submission. Rule 29(c)(5), Fed. R. App. P.

errors of fact that undergird the panel opinion, namely its assertion that the Latin Cross is the preeminent and exclusive symbol of Christianity. Additionally, the panel's incomplete depiction of the crosses at Arlington National Cemetery minimizes the disturbing implications of its opinion. Unmentioned therein is that the design of the National Mall was consciously based on a Latin cross. Finally, the memory of the fallen commemorated in the Bladensburg cross deserves more respect than the removal of the central memorial of their sacrifice.

### **ARGUMENT**

**I. The panel incorrectly asserted that the Latin cross is the preeminent symbol of Christianity and an exclusively Christian symbol.**

**A. The Latin cross is not the preeminent symbol of Christianity.**

Citing several circuit court opinions but no Fourth Circuit or Supreme Court opinions, the panel identifies the Latin cross as the “preeminent symbol of Christianity” that is “exclusively a Christian symbol, and not a symbol of any other religion.” Panel opinion, at 18-19. The Foundation questions the accuracy of this statement. In *Wallace v. Jaffree*, 472 U.S. 38 (1985), Justice Rehnquist famously wrote that “no amount of repetition of historical errors in judicial opinions can make the errors true.” *Id.* at 107 (Rehnquist, J., dissenting).

Undeniably, Jesus died on a cross. *See Matthew 27:32-54*. The Latin cross, however, is not “preeminent” above other forms of the cross. Even Christians disagree as to whether the cross upon which Jesus died resembled a Latin cross.<sup>2</sup>

The Encyclopedia Britannica describes four types of crosses:

There are four basic types of iconographic representations of the cross: the *crux quadrata*, or Greek cross, with four equal arms; the *crux immissa*, or Latin cross, whose base stem is longer than the other three arms; the *crux commissa*, in the form of the Greek letter tau, sometimes called St. Anthony’s cross; and *crux decussata*, named from the Roman *decussis*, or symbol of the numeral 10, also known as St. Andrew’s cross. Tradition favours the *crux immissa* as that on which Christ died, but some believe that it was a *crux commissa*. The many variations and ornamentations of processional, altar, and heraldic crosses, of carved and painted crosses in churches, graveyards, and elsewhere, are developments of these four types.<sup>3</sup>

These variations of the cross appear in different times, geographical locations, and denominational traditions, *e.g.*, the Celtic cross common in Ireland, the St. Andrews cross of Scotland, the St. George’s cross of Genoa, the Maltese cross used by crusading orders, the Jerusalem cross of the Kingdom of Jerusalem. Roman Catholics commonly use a crucifix with the image of Jesus Christ affixed to it; Protestants usually do not depict Jesus on the cross because the crucifixion has been completed.

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<sup>2</sup> “In shape we find three basic forms. The cross was a vertical, pointed stake ... or it consisted of an upright with a cross-beam above it ... or it consisted of two intersecting beams of equal length...” 7 Gerhard Kittel, *Theological Dictionary of the New Testament* 572 (“Stauros”) (1971).

<sup>3</sup> <https://www.britannica.com/topic/cross-religious-symbol>.

## **B. The Latin cross is not an exclusively Christian symbol.**

The Latin cross, “used as a Pagan symbol for millennia before the foundation of the Christian Church,”

has been found in China and African countries. It appears on Scandinavian Bronze Age stones depicting the destructive hammer of Thor, their god of thunder and war. It is regarded a magical symbol, bringing good luck and diverting evil. Rock carvings of the cross have been interpreted as a solar symbol, or a symbol of earth with its points representing north, south, east, and west.

To alchemists, the cross was a symbol of the four ‘classical elements’: air, earth, fire, water. Elsewhere, the cross variously symbolized health, fertility, life, immortality, the union of heaven and earth, spirit and matter, the sun and the stars.<sup>4</sup>

In light of all of these variations, to say the Latin cross is the exclusive symbol of Christianity is simply erroneous.

## **II. The panel’s limited depiction of the crosses at Arlington National Cemetery is misleading.**

The panel’s appendix shows the cross as a small symbol on gravestones in Arlington National Cemetery. Although most of the graves have a simple cross<sup>5</sup> carved into the headstone, the cemetery also contains much larger crosses. These include the Argonne Cross, erected “in memory of our men in France 1917-1918”

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<sup>4</sup> Seiyaku, *Latin Cross*, [www.seiyaku.com/customs/crosses/latin.html](http://www.seiyaku.com/customs/crosses/latin.html).

<sup>5</sup> These include Latin, Celtic, Aaronic, Armenian, Episcopal, Greek, Lutheran, Presbyterian, Russian Orthodox, Serbian Orthodox, United Methodist, Christian and Missionary Alliance crosses and others. U.S. Department of Veterans Affairs, National Cemetery Administration, *Available Emblems of Belief for Placement on Government Headstones and Markers*, <https://goo.gl/skjTQJ>.

(13 feet tall), the “Cross of Sacrifice” behind the Tomb of the Unknowns, the Canadian Cross of Sacrifice (24 feet tall), the Spanish-American War Nurses Monument (maltese cross), and others.<sup>6</sup> The panel, perhaps uncomfortable with the idea that its opinion logically would require the removal of prominent crosses at the National Cemetery, struggles to avoid this conclusion. *See* panel opinion at pp. 26-27 & nn. 16-17.

### **III. The National Mall is based on a grid of a Latin cross.**

Based primarily on the 1791 design of Major Pierre Charles L’Enfant that was approved by President Washington, the National Mall is built in the shape of a Latin cross. A 1902 Senate Park Commission Report stated:

Regarding the [Washington] Monument as the center, the Capitol as the base, and the White House as the extremity of one arm of a Latin cross, we have at the head of the composition on the banks of the Potomac a memorial site of the greatest possible dignity, with a second and only less commanding site at the extremity of the second arm.<sup>7</sup>

If Congress can expressly reference the Latin cross as the basis for the plan for the National Mall, the City of Bladensburg can erect a Latin cross as a memorial to American veterans. Or must we now plow under the National Mall?

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<sup>6</sup> James Edward Peters, *Arlington National Cemetery: Shrine to America’s Heroes* (2008).

<sup>7</sup> U.S. Senate Committee on the District of Columbia, Senate Report No. 166, 57th Congress, 1st Session (1902), p. 2.

**IV. The Court should respect the memory of deceased veterans and the rights and sensibilities of their families and descendants.**

Missing from the majority's analysis is consideration for the memory of the deceased veterans and the rights and sensibilities of their families and descendants.

A memorial monument, whether a private gravestone or a public memorial, is a work of art protected by the Free Speech Clause and in some instances by the Free Exercise Clause of the First Amendment. Many persons, planning for death, invest careful thought, effort, and expense to design a headstone for themselves or their loved ones. Those plans may include the precise words to be engraved, the type of stone including its shape and dimensions, and the artwork to appear on the stone such as crosses, angels, or floral designs. Many, for religious or other reasons, very much want a cross on their gravestone. They would consider removal of that cross to be nothing less than grave desecration.

The Court should respect the memory of those for whom this monument was dedicated over ninety years ago, and the rights and sensibilities of those who planned it, contributed to support it, and dedicated it to their loved ones. Such consideration is utterly absent from the majority's analysis. "[A] Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people." *Salazar v. Buono*, 559 U.S. 700, 721 (2010) (plurality opinion).

## CONCLUSION

This Court should grant rehearing *en banc* and affirm the judgment of the district court.

Respectfully submitted,

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November 8, 2017

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Rule 32(a)(7)(B), Fed. R. App. P., because it contains 1,321 words, excluding those parts of the brief exempted by Rule 32(a)(7)(B)(iii), Fed. R. App. P.
2. This brief complies with the typeface requirements of Rule 32(a)(5), Fed. R. App. P., and the type style requirements of Rule 32(a)(6), Fed. R. App. P., because it was prepared in Microsoft Word using Times New Roman 14-point type.

/s/ John Eidsmoe  
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Counsel for *Amicus Curiae*

**CERTIFICATE OF SERVICE**

I certify that on the 8th day of November, 2017, I filed the foregoing document with the Clerk of the Court using the CM/ECF system that will automatically serve electronic copies upon all counsel of record.

/s/ John Eidsmoe

John Eidsmoe

Counsel for *Amicus Curiae*