

17-1717 AMERICAN LEGION V. AMERICAN HUMANIST ASSOCIATION

DECISION BELOW: 874 F.3d 195

LOWER COURT CASE NUMBER: 15-2597

QUESTION PRESENTED:

In the decision below, the Fourth Circuit held that a 93-year-old memorial to the fallen of World War I is an unconstitutional establishment of religion, merely because it is shaped like a cross. The Fourth Circuit reached this conclusion even though the memorial was designed to be a war memorial, has only ever been a war memorial, has only ever been regarded by the community as a war memorial, and is on public land only because of traffic safety concerns that arose 40 years after the memorial was built. The questions presented are:

1. Whether a 93-year-old memorial to the fallen of World War I is unconstitutional merely because it is shaped like a cross.

2. Whether the constitutionality of a passive display incorporating religious symbolism should be assessed under the tests articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), *Van Orden v. Perry*, 545 U.S. 677 (2005), *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), or some other test.

3. Whether, if the test from *Lemon v. Kurtzman*, 403 U.S. 602 (1971), applies, the expenditure of funds for routine upkeep and maintenance of a cross-shaped war memorial, without more, amounts to an excessive entanglement with religion in violation of the First Amendment.

CONSOLIDATED WITH 18-18 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 11/2/2018