

*Spring 2015*

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### Recommended Citation

Ivan E. Bodensteiner, *Not Surprisingly, a Crucifix Conveys a Religious Message*, 49 Val. U. L. Rev. 897 (2015).

Available at: <https://scholar.valpo.edu/vulr/vol49/iss3/12>

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## NOT SUPRISINGLY, A CRUCIFIX CONVEYS A RELIGIOUS MESSAGE

Ivan E. Bodensteiner\*

### I. INTRODUCTION

In his Article, *The Story of the Gary, Indiana Crucifix*, Professor Jarvis provides the interesting historical background to the decision in *Gonzales v. North Township of Lake County, Indiana*.<sup>1</sup> Professor Jarvis explains not only the steps leading to the dedication of at least two crucifixes in Northwest Indiana, but also describes the people involved in the early opposition to the crucifixes.<sup>2</sup> I was asked to provide a brief description of the litigation that led to the removal of one of the crucifixes from its prominent place in a public park, Wicker Memorial Park, located in North Township, Lake County, Indiana, near the City of Hammond. When I first learned of the crucifix in Wicker Park, through my participation in the legal panel of the Calumet Chapter of the Indiana Civil Liberties Union ("ICLU"), it seemed apparent that this display represented an endorsement of Christianity and, more particularly, Catholicism. However, it turned out that it was not so apparent to others and, in light of the Supreme Court's Establishment Clause jurisprudence since 1993, a similar display challenged today might survive a First Amendment challenge.

### II. BACKGROUND TO THE LITIGATION

As noted by Professor Jarvis, the ICLU, particularly the Calumet Chapter in Northwest Indiana, became involved in the crucifix controversy shortly after a crucifix was erected and dedicated in Jordan Park in Gary, Indiana, in late May 1955.<sup>3</sup> The Wicker Park crucifix was erected and dedicated a few months later, in October 1955.<sup>4</sup> It appears from Professor Jarvis' account that the early opposition, at least in part, was led by members of the clergy who expressed their opposition to

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<sup>1</sup> See *Gonzales v. N. Twp. of Lake Cnty.*, 4 F.3d 1412, 1414 (7th Cir. 1993) (involving a lawsuit against North Township in Lake County, Indiana alleging the display of a crucifix in a public park violates the Establishment Clause of the First Amendment). See generally Robert M. Jarvis, *The Story of the Gary, Indiana Crucifix*, 49 VAL. U. L. REV. 873, 880-81 (recounting how the Knights of Columbus and the Catholic Affairs Committee of Lake County Fourth Degree Assembly decided to support a project for erecting large crucifixes throughout Lake County to memorialize veterans of the country's wars).

<sup>2</sup> Jarvis, *supra* note 1, at 889-92.

<sup>3</sup> *Id.* at 881-83.

<sup>4</sup> See *Gonzalez*, 4 F.3d at 1413 (noting that the second cross was dedicated on October 16, 1955).

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North Township officials.<sup>5</sup> After the early opposition and dismissal of a lawsuit filed in the Lake County Circuit Court, there was a lull in the opposition.<sup>6</sup> The primary impetus for the renewed opposition, which led to the *Gonzales* case, was Mel Schlesinger, a local realtor.<sup>7</sup> He raised the issue with the Calumet Chapter of the ICLU in August 1981.<sup>8</sup> The action began with a letter to Township officials in October 1982 and concluded with the removal of the crucifix in 1994.<sup>9</sup> Mr. Schlesinger, along with four other residents of the area who joined him, had the courage to initiate what they knew would be unpopular litigation.<sup>10</sup>

III. THE LENGTHY LITIGATION

The complaint filed by the plaintiffs in the U.S. District Court for the Northern District of Indiana was based on the First Amendment to the United States Constitution and alleged that “[b]y maintaining a religious symbol of the Catholic Church in the Park at public expense, the Defendants have caused injury to the Plaintiffs by infringing their use and enjoyment of Wicker Memorial Park and offending their moral and religious sensitivity.”<sup>11</sup> The plaintiffs sought a declaratory judgment determining that the crucifix in the park “violates the First Amendment to the U.S. Constitution . . . [,] a permanent injunction enjoining the Defendants from maintaining the [crucifix] in the Park, and requiring the Defendants to remove it . . . [,] and . . . [an] award [for] damages, costs, and attorney fees.”<sup>12</sup> Aside from the merits, the defendants raised a statute of limitations defense and further claimed, as is common in Establishment Clause litigation, that the plaintiffs lacked standing.<sup>13</sup> The trial court decided that the claim was not barred by the statute of limitations because the plaintiffs alleged “a continuing violation of the First Amendment, and as each day there is a violation, each day [their] cause of action accrues.”<sup>14</sup>

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<sup>5</sup> Jarvis, *supra* note 1, at 885–86.

<sup>6</sup> See *id.* at 892–93 (“On March 8, 1963, Judge Felix A. Kaul dismissed Tomsich’s case for lack of record activity.”).

<sup>7</sup> *Id.* at 893.

<sup>8</sup> *Id.* at 894.

<sup>9</sup> *Id.* at 894–95.

<sup>10</sup> *Id.* at 894.

<sup>11</sup> See *Gonzales v. N. Twp. of Lake Cnty.*, 800 F. Supp. 676, 679 (N.D. Ind. 1992) (quoting Pl.’s Complaint, at ¶ 8).

<sup>12</sup> See *id.* Throughout the opinion, the court refers to the crucifix as a “Monument,” which is consistent with its ultimate conclusion. However, I will call it a crucifix.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 684.

Addressing the standing issue, the trial court determined that the plaintiffs “do not have standing as taxpayers, as Township funds were not used to put up the Monument, nor are Township funds used to maintain the Monument, albeit that funds are used to maintain the area surrounding the Monument.”<sup>15</sup> However, since plaintiff Appleman “curtailed his use of a public benefit [and] the use of the Park,” due to the presence of the crucifix, he had standing.<sup>16</sup> The court determined that the other four plaintiffs lacked standing because they only alleged that they were morally and religiously offended by the display of the crucifix.<sup>17</sup>

On the merits, the trial court applied the three-part *Lemon* test.<sup>18</sup> First, it concluded the crucifix has a secular purpose—“it is a war memorial to those who have defended our Country.”<sup>19</sup> While conceding that the crucifix has religious connotations, the court determined that the “secular attributes far outweigh[ed] any religious connotations based on the facts surrounding its dedication.”<sup>20</sup> In addressing the second part of the *Lemon* analysis, the court found that the crucifix did “not advance or inhibit religion in its principal or primary effect or otherwise endorse or disapprove of religion,” since the crucifix “was erected by the Knights of Columbus, and it [was] not maintained by the Township.”<sup>21</sup> Therefore, the trial court noted that “the average citizen would not believe that the Township’s aim was to advance or endorse Christianity or Catholicism in particular.”<sup>22</sup> Further, the court noted that the crucifix “occupie[d] a minutial amount of the Park, [was] surrounded by secular activities and opportunities at the Park, and [was] part and parcel of a Memorial Park.”<sup>23</sup> In addition, the crucifix was located several miles from the offices of the North Township Trustee.<sup>24</sup> Finally, in its application of *Lemon*, the trial court determined that the crucifix did “not foster an

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<sup>15</sup> *Id.* at 683.

<sup>16</sup> *Id.* at 684.

<sup>17</sup> *Gonzales*, 800 F. Supp. at 683.

<sup>18</sup> *See id.* at 685 (“In deciding these types of cases, the Supreme Court has utilized the *Lemon v. Kurtzman* test to determine whether a government practice violates the Establishment Clause.”); *see also* *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (establishing a three prong test). The three prongs are: (1) whether the statute has a secular legislative purpose; (2) whether the primary effect “neither advances nor inhibits religion”; and (3) it “must not foster an excessive government entanglement with religion.” *Id.* (quoting *Walz v. Tax Comm’n*, 397 U.S. 664, 674 (1970)) (internal quotation marks omitted).

<sup>19</sup> *Gonzales*, 800 F. Supp. at 689.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 689–90 (internal quotation marks omitted).

<sup>24</sup> *See id.* at 690 (taking judicial notice of the addresses of two Trustee offices).

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excessive entanglement with religion” because after the crucifix was erected the Township “had little to do with its maintenance or with activities in connection with the Monument as a war memorial.”<sup>25</sup> The mere presence of the crucifix on Township property, far removed from the seat of government, could not “constitute excessive entanglement without any type of affirmative action taken by the Township.”<sup>26</sup> Based on its application of *Lemon*, the court granted the defendants’ motion for summary judgment and denied the plaintiffs’ motion for partial summary judgment.<sup>27</sup>

On appeal, the Seventh Circuit Court of Appeals viewed the case very differently than the trial court. First, the court held that all five plaintiffs had standing to challenge the crucifix, even though it agreed that the plaintiffs could not claim standing by virtue of their taxpayer status because of their inability to show that tax revenue was spent for the crucifix.<sup>28</sup> The Court of Appeals did not disturb the trial court’s finding that Appleman had standing because “for all intents and purposes, [he] discontinued his use of the Park.”<sup>29</sup> In addition, the Court of Appeals held that the other four plaintiffs had standing to challenge the crucifix because, while they had not completely discontinued their use of the park, “[t]heir claim that they avoid the area of the park where the crucifix is displayed because of its presence constitutes an injury in fact” sufficient to confer standing.<sup>30</sup> “[T]heir full use and enjoyment of the Park has been curtailed because of the defendants’ display of the crucifix” and that “prohibition to their full use and enjoyment of the public park is an injury in fact.”<sup>31</sup>

Turning to the merits of the Establishment Clause claim, the court determined that, while controversial among its members, “the Supreme Court recently reminded us that *Lemon* is controlling precedent and should be the framework used by courts when reviewing Establishment Clause challenges.”<sup>32</sup> Before addressing the three-part *Lemon* test, the court indicated that it had to “determine whether the challenged symbol is a religious one.”<sup>33</sup> In concluding that the crucifix is a religious symbol,

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<sup>25</sup> *Gonzales*, 800 F. Supp. at 690.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Gonzales v. N. Twp. of Lake Cnty.*, 4 F.3d 1412, 1416 (7th Cir. 1993). The court also noted that the plaintiffs’ alleged “[o]ffense to moral and religious sensitivities does not constitute an injury in fact and is insufficient to confer standing.” *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 1417.

<sup>32</sup> *Id.* at 1417–18 (citing *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993)).

<sup>33</sup> *Gonzales*, 4 F.3d at 1418.

the court stated “we are masters of the obvious, and we know that the crucifix is a Christian symbol . . . . In fact, the crucifix is arguably the quintessential Christian symbol because it depicts Christ’s death on the cross and recalls thoughts of his passion and death.”<sup>34</sup>

The appellate court then moved to its application of the three-part *Lemon* test. The court found guidance in two earlier decisions, one in the Eleventh Circuit and another in a Texas district court.<sup>35</sup> The first prong of the *Lemon* analysis requires a secular purpose for government’s display of a religious symbol.<sup>36</sup> While the Township claimed that the crucifix was intended to act as a war memorial, this was an attempt to mask the real religious purpose.<sup>37</sup> The court stated that it would defer to government’s “sincere articulation of a religious symbol’s secular purpose,” but it also indicated that “the stated purpose cannot be a sham to avoid a potential Establishment Clause violation.”<sup>38</sup> Finding the reasoning in *Rabun* and *Eckels* more persuasive than the reasoning in other cases, the court stated:

In this case the purpose behind the display of the Wicker Park crucifix arises from religious stirrings like those the Eleventh Circuit found in *Rabun*. The record illustrates that the Knights’ goal was to spread the Christian message throughout Lake County, Indiana. The historical documents, as well as the nature of the monument, convey the unassailable impression that memorializing the crucifix was simply a means to this end. The Township’s claim that the war memorial purpose is the primary reason the crucifix is displayed is unpersuasive. We can imagine no secular purpose served by a crucifix that is free from any designation or memorialization. Moreover, the Township has offered no evidence to show that the crucifix has ever been used

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<sup>34</sup> *Id.* The court noted that it had reached a similar conclusion about a Latin cross in an earlier case, “acknowledging that it is an unmistakable symbol of Christianity as practiced in this country today.” *Id.* (citing *Harris v. City of Zion*, 927 F.2d 1401, 1403 (7th Cir. 1991)).

<sup>35</sup> See *ACLU of Ga. v. Rabun Cnty. Chamber of Commerce*, 698 F.2d 1098, 1101–02, 1111 (11th Cir. 1983) (concluding that a Latin cross erected and maintained in the Black Rock Mountain State Park by the Rabun County Chamber of Commerce, with initial approval from the State of Georgia, violates the Establishment Clause); *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984) (addressing three Latin crosses placed in a public park with the authorization and assistance of a county commissioner and concluding that the crosses violate the Establishment Clause).

<sup>36</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

<sup>37</sup> *Gonzales*, 4 F.3d at 1419.

<sup>38</sup> *Id.*

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for memorial purposes. We believe the evidence contradicts the Township's statement of purpose and that, indeed, the religious symbol here was not intended to, and does not now, serve a secular purpose.<sup>39</sup>

Because *Lemon* requires that the government satisfy all three prongs, this determination alone was sufficient to find a violation of the Establishment Clause. Nevertheless, the court addressed the other two prongs of the *Lemon* analysis.

To pass constitutional muster under the *Lemon* analysis, the publicly-displayed religious symbol must "neither advance nor inhibit religion in its principal or primary effect."<sup>40</sup> Here the key is the message conveyed by a religious symbol and if "the message is a government endorsement or advancement of religion the symbol has failed the *Lemon* test."<sup>41</sup> Before the Seventh Circuit's decision in *Gonzales*, the Supreme Court had determined that the context in which the religious symbol is displayed is crucial, because the context may affect the message.<sup>42</sup> When the Seventh Circuit issued its opinion, the crucifix had been standing in Wicker Park for nearly forty years and while "the Township [did] not argue that the duration of its display gives the crucifix landmark or cultural status, it [did] argue that the duration of its display reinforces its secular effect."<sup>43</sup> The court was not impressed by the argument that the duration of the violation of the Establishment Clause somehow minimizes the violation.<sup>44</sup> Instead, the court concluded that "the crucifix's presence in

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<sup>39</sup> See *id.* at 1419–21 (applying the *Rabun* facts and holding to the Wicker Park crucifix); see also *Carpenter v. City & Cnty. of S.F.*, 803 F. Supp. 337, 351–52 (N.D. Cal. 1992) (refusing to permanently enjoin a display of Mount Davidson Cross); *Jewish War Veterans of U.S. v. United States*, 695 F. Supp. 3, 14–15 (D.D.C. 1988) (ruling that a cross is unconstitutional in a government memorial). But see *Eugene Sand & Gravel, Inc. v. City of Eugene*, 558 P.2d 338, 349 (Or. 1976) (holding that a cross in a municipal park is constitutional because the present purpose of the display is secular).

<sup>40</sup> *Gonzales*, 4 F.3d at 1418.

<sup>41</sup> *Id.* at 1421.

<sup>42</sup> See *Cnty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 666 (1989) (discussing religious displays during Christmas season). In *Allegheny*, the Court held that a crèche displayed in the main area of the county courthouse, without any secular decorations, and donated by a religious society violates the Establishment Clause. *Id.* at 573–74. Another religious symbol at issue in *Allegheny*, a "menorah placed just outside the City-County Building, next to a Christmas tree and a sign saluting liberty" did not violate the Establishment Clause. *Id.* at 578; see also, *Lynch v. Donnelly*, 465 U.S. 668, 692 (1984) (discussing the crucial obligation for governments not to endorse religion). In *Lynch*, the Court held that display of a government-owned crèche in a setting that included secular holiday decorations does not violate the Establishment Clause. *Id.* at 687.

<sup>43</sup> *Gonzales*, 4 F.3d at 1422.

<sup>44</sup> *Id.*

the Park conveys the primary message of the Township's endorsement of Christianity."<sup>45</sup> The court summarized its finding as follows:

Not only do we believe that the primary message the crucifix conveys is a government endorsement of religion, we believe that the crucifix does not convey any secular message, whether remote, indirect, or incidental. The only way to receive a secular message before 1983 was to look behind the shrubbery at the base of the crucifix to find the plaque that designated the statue is a war memorial. Since the plaque's disappearance there is no chance that anyone without special knowledge of the crucifix's history would know that it was purportedly intended to memorialize fallen soldiers.

The crucifix in Wicker Park does not bear secular trappings sufficient to neutralize its religious message. It is not seasonally displayed in conjunction with other holiday symbols. It does not have historical significance. But, it is permanent government speech in a prominent public area that endorses religion, and violates the Establishment Clause.<sup>46</sup>

Thus, the crucifix in Wicker Park failed the first two prongs of the *Lemon* analysis.

Finally, the court looked at the excessive entanglement prong of the *Lemon* test.<sup>47</sup> "Because the record did not reflect any contact between the Township and the Knights concerning the design of the crucifix or its payment, [the court found] that the Township [was] not excessively entangled in religion by virtue of the crucifix standing in Wicker Park."<sup>48</sup> After the Seventh Circuit remanded the case to the district court to address the appropriate relief, the parties resolved the matter.<sup>49</sup> As indicated by Professor Jarvis, the crucifix was moved from Wicker Park to a Catholic Church a few miles away in Highland, Indiana.<sup>50</sup> Undoubtedly, that is a far more appropriate place for a crucifix.

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1423 (citation omitted).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Gonzales*, 4 F.3d at 1423; Jarvis, *supra* note 1, at 895.

<sup>50</sup> Jarvis, *supra* note 1, at 895 (quoting Mel Schlesinger, *The Crucifix in Wicker Park*, FREEDOM FROM RELIGION FOUND. (Oct. 1994), available at <http://ffrf.org/legacy/fttoday/1994/oct/schlesinger.php>, archived at <http://perma.cc/94J4-H4V6>).



## IV. SUBSEQUENT ESTABLISHMENT CLAUSE JURISPRUDENCE

The Establishment Clause no longer assures separation of church and state. Government is now free to subsidize religious instruction and worship under the guise of private choice in directing government-issued educational vouchers to religious schools.<sup>51</sup> Government displays of religious symbols do not violate the Establishment Clause so long as the religious message is not dominant.<sup>52</sup> Government is free to display religious symbols, as long as it is careful to disguise its real purpose and include sufficient non-religious content to discount the religious nature of the display.<sup>53</sup> In addition, government can proliferate the display of religious symbols on its property by creating a limited public forum in which private parties are allowed to display items, including religious symbols.<sup>54</sup>

It is not clear whether these more recent cases would change the outcome in *Gonzales*, given the fact the Township's attempt to switch from the original religious purpose to a war memorial was only thinly veiled. Recently, in *Salazar v. Buono*, the Court addressed a complex situation involving a Latin cross placed on Sunrise Rock in the Mojave National Preserve by private citizens in 1934 to honor American soldiers who fell in World War I.<sup>55</sup> The cross that stands on federal land was replaced or repaired several times, "most recently in 1998 by . . . a private

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<sup>51</sup> See *Zelman v. Simmons-Harris*, 536 U.S. 639, 662–63 (2002) (providing the Justices' observations of private and public education choices with respect to religion); see also *Mitchell v. Helms*, 530 U.S. 793, 831, 835 (2000) (discussing Chapter two aid and its benefits to private schools). See generally Improving America's School Act of 1994, Pub. L. No. 103-382, 108 Stat. 382 (1994) (providing the codified text of Chapter two).

<sup>52</sup> Compare *Van Orden v. Perry*, 545 U.S. 677, 681–83, 691–92 (2005) (holding that a passive display of the Ten Commandments outside the state capitol surrounded by other monuments does not violate the Establishment Clause because, even though it sends dual messages, religious and secular, the secular message predominates), with *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 850, 869, 881 (2005) (finding that display of the Ten Commandments on the walls in two county courthouses violated the Establishment Clause because the displays lacked a secular purpose).

<sup>53</sup> Compare *Perry*, 545 U.S. at 691–92 ("Texas has treated its Capital grounds monuments as representing the several strands in the State's political history and legal history. The inclusion of the Ten Commandments monument in this group has a dual significance, partaking of both religion and government."), with *McCreary Cnty.*, 545 U.S. at 869 ("The reasonable observer could only think that the Counties meant to emphasize and celebrate the Commandments' religious meaning.")

<sup>54</sup> See, e.g., *Capital Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 758, 770 (1995) (determining that preventing the Ku Klux Klan from erecting a large Latin cross in the park across from the Ohio statehouse violated the Klan's freedom of speech and allowing it would not violate the Establishment Clause).

<sup>55</sup> *Salazar v. Buono*, 599 U.S. 700, 705–06 (2010).

citizen who owns land elsewhere in the Preserve.”<sup>56</sup> The plaintiff, a retired Park Service employee who regularly visits the Preserve, obtained an injunction requiring removal of the cross.<sup>57</sup> Beginning before *Buono I* was filed, Congress entered the fray, passing several statutes “forbidding the use of federal funds to remove the cross,” designating the cross and the adjoining land “as a national memorial commemorating United States participation in World War I and honoring the American veterans of that war,” again prohibiting the use of federal “funds to remove the cross,” and finally directing the Secretary of the Interior “to transfer to the [Veterans of Foreign Wars] the Government’s interest in the land that had been designated a national memorial” in exchange for land elsewhere in the Preserve.<sup>58</sup> After the permanent injunction issued in *Buono I* was affirmed, “Buono returned to the District Court seeking to prevent the land transfer,” and the district court “concluded that the transfer was an attempt by the Government to keep the cross atop Sunrise Rock and so was invalid.”<sup>59</sup> Therefore, it enjoined the government from implementing the land-transfer statute.<sup>60</sup> This injunction was affirmed by the Ninth Circuit, but the Supreme Court reversed and remanded without a majority opinion.<sup>61</sup> This case provides little guidance, although it is quite apparent that five Justices favor implementation of the federal statute transferring the land on which the Latin cross stands to a private party.<sup>62</sup> So, after at least four

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<sup>56</sup> *Id.* at 707.

<sup>57</sup> See *Buono v. Norton*, 212 F. Supp. 2d 1202, 1205, 1217 (C.D. Cal. 2002) (granting plaintiff’s petition that challenged the constitutionality of National Park Services preservation of a cross).

<sup>58</sup> *Salazar*, 599 U.S. 700, 709–10. These statutes were passed between 2001 and 2004. *Id.*

<sup>59</sup> See *id.* at 710 (describing the result in *Buono v. Norton*, 364 F. Supp. 2d 1175 (C.D. Cal. 2005)).

<sup>60</sup> See *Buono*, 364 F. Supp. 2d at 1182 (granting Buono’s request to enforce the permanent injunction).

<sup>61</sup> *Buono v. Kempthorne*, 502 F.3d 1069, 1086 (9th Cir. 2007), *aff’d* 364 F. Supp. 2d 1175, *rev’d*, 599 U.S. 700, 722. In *Salazar*, Justice Kennedy wrote an opinion for a plurality, joined by Chief Justice Roberts and Justice Alito. *Salazar*, 599 U.S. at 705. Justices Roberts and Alito each wrote a concurring opinion, with the latter indicating the remand should be with instructions to vacate the injunction. *Id.* at 728 (Roberts, J., concurring); *id.* at 705–29 (Alito, J., concurring). Justice Scalia wrote a concurring opinion, joined by Justice Thomas, concluding that Buono lacks standing to challenge the federal transfer statute. *Id.* at 729–35 (Scalia, J., concurring). Justice Stevens wrote a dissenting opinion, joined by Justices Ginsburg and Sotomayor, concluding the permanent injunction issued by the district court, preventing the land transfer, was a proper exercise of its authority to enforce its 2002 judgment. *Id.* at 735–60 (Stevens, J., dissenting). Justice Breyer dissented, concluding the “law of injunctions” controlled the case and, therefore, the writ of certiorari should have been dismissed as improvidently granted and absent that, the judgment of the Ninth Circuit should be affirmed. *Id.* at 1842–45 (Breyer, J., dissenting).

<sup>62</sup> *Salazar*, 599 U.S. at 722–23.

decisions in the lower federal courts, a decision of the Supreme Court with six opinions, and four Acts of Congress, the Latin cross still stands on a small chunk of privately owned land in the midst of 25,000 square miles comprising the Preserve.<sup>63</sup>

#### V. CONCLUSION

The history of the Wicker Park crucifix, including more than ten years of litigation, as presented by Professor Jarvis, provides a good example of the controversy that can arise when government decides to get in the business of displaying religious symbols. All of the controversy surrounding the Wicker Park crucifix, as well as other government displays of religious symbols, could be avoided easily if governmental units at all levels simply stay out of that business. There is no evidence suggesting that displaying religious symbols improves any unit of government. There is plenty of evidence that such displays generate controversy and result in costly litigation.<sup>64</sup> If government is truly interested in honoring our soldiers, there are many ways to do so without the use of religious symbols.<sup>65</sup> Instead of simply determining that government's display of religious symbols violates the Establishment Clause, the Supreme Court's decisions invite government to continue the unnecessary practice and thereby promote strife and controversy over religion. Separation of religion and government was, and still is, a good idea.

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<sup>63</sup> See Venturi, *Mojave Cross Resurrected at Preserve's Sunrise Rock*, SAN BERNARDINO CNTY. SENTINEL (Dec. 31, 2012), <http://sbsentinel.com/2012/12/mojave-cross-resurrected-at-preserves-sunrise-rock>, archived at <http://perma.cc/8C8D-FYJ9> ("The Mojave Cross has been re-erected at Sunrise Rock in the Mojave National Preserve, where it stood for [sixty-seven] years to honor those American Soldiers slain in what was once known as the Great War, now referred to as World War I.")

<sup>64</sup> *Salazar*, 599 U.S. at 729, 735. In his concurring opinion in *Salazar*, Justice Scalia says that "[k]eeping within the bounds of our constitutional authority often comes at a cost. Here, the litigants have lost considerable time and money disputing the merits, and we are forced to forgo an opportunity to clarify the law." *Id.*

<sup>65</sup> *Id.* Justice Stevens, in his dissenting opinion in *Salazar* says "[m]aking a plain, unadorned Latin cross a war memorial does not make the cross secular. It makes the war memorial sectarian." *Id.* at 735, 747. Justice Stevens noted that he "would consider it tragic if the Nation's fallen veterans were to be forgotten but there are countless different ways, consistent with the Constitution, that such an outcome may be averted." *Id.* at 748-49 n.8 (internal citations omitted).