August 23, 2019

**VIA CM/ECF**

David J. Smith, Clerk of the Court
United States Court of Appeals, for the Eleventh Circuit
56 Forsyth St., N.W., Atlanta, Georgia 30303

Re: *Kondrat'yev, et al v. City of Pensacola, Florida, et al*, No. 17-13025

## I. Introduction

In 1969, the City of Pensacola erected a 34-foot-tall Latin cross (the "Bayview Cross") in its Bayview Park to serve as the holy object for annual Easter Sunrise Services. Both the District Court and this Court soundly concluded that the City's display violates the Establishment Clause because it "clearly has a primarily—*if not exclusively*—religious purpose." DE-41 at 19; Op. 9-10. Both courts agreed that *ACLU v. Rabun Cnty. Chamber of Commerce, Inc*., 698 F.2d 1098 (11th Cir. 1983) (*per curiam*) "controls." Op. 10; DE-41 at 21. *Rabun* held that the "maintenance of [a] cross in a state park" violated the Establishment Clause because it was dedicated and used for "Easter Sunrise Services," a clear religious purpose. *Id.* at 1111.

As Judge Newsom explained, "[a]s tempting as it may be to . . . 'write around' *Rabun*" and eschew the longstanding secular purpose requirement enshrined in *Lemon*, a contrary "Supreme Court decision must be clearly on point." Op. 11 n.1. *American Legion* did not overrule the longstanding pre-*Lemon* secular purpose requirement at the heart of *Rabun* and *McCreary Cty. Ky. v. Am. Civil Liberties Union of Ky*., 545 U.S. 844 (2005).

Nothing in *American Legion* permits a city to erect a Christian cross in a public park for the sole purpose of worship. Despite Justice Alito's language in the

plurality criticizing the "*Lemon* test," the majority ultimately scrutinized both purpose and effect and upheld the Bladensburg Cross based on highly unique facts demonstrating that its purpose and meaning were mostly secular, tethered to the highly unique role of the Latin cross in World War I.

The Court stressed that "[a]lthough the cross has long been a preeminent Christian symbol, its use in the Bladensburg memorial has a *special significance*." *Am. Legion v. Am. Humanist Ass'n*, No. 17-1717 ["Slip op."] at *9 (U.S. Jun. 20, 2019) (emphasis added).[1] *Accord id.* at *35 (the Bladensburg Cross "carries *special significance* in commemorating *World War I*"); *id.* ("the symbol took on an added *secular meaning* when used in *World War I memorials*") (emphasis added). The Bladensburg Cross's secular meaning as a symbol of World War I was buttressed by its physical features and placement amongst numerous other war memorials in Veterans Memorial Park. *Id.* at *14-16, *36.

The majority was careful to cabin its ruling by stating the obvious: "the cross originated as a Christian symbol and *retains that meaning in many contexts*." *Id.* at *35 (emphasis added). The Supreme Court did not address the use of the cross where the symbol was used for purely religious purposes. The Bayview Cross has no connection to World War I, is not a memorial of any kind, and was erected and has been used solely for religious worship.

[1] *Available at* https://casetext.com/case/american-legion-v-american-humanist-assn (last viewed August 23, 2019).

## II. *Rabun*, *McCreary*, and the pre-*Lemon* secular purpose and effect requirements remain binding on this Court.

### A. *American Legion* did not overrule or even weaken the longstanding secular purpose requirement.

This Court is "not at liberty to disregard binding case law that is . . . closely on point and has only been weakened, rather than directly overruled, by the Supreme Court." *Fla. League of Prof'l Lobbyists, Inc. v. Meggs*, 87 F.3d 457, 462 (11th Cir. 1996). Nothing in *American Legion* comes close to overruling the longstanding secular purpose requirement, which exists independent of the *Lemon* "test."

It is "settled [Supreme Court] jurisprudence that 'the Establishment Clause prohibits government from abandoning secular purposes.'" *Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1, 8-9 (1989) (citing cases pre- and post-dating *Lemon v. Kurtzman*, 403 U.S. 602 (1971)).[2] In *Epperson*, for instance, the Court unanimously ruled that a statute violated the Establishment Clause because it lacked a primary secular purpose. 393 U.S. at 104. Long before *Lemon*, the Court announced in *Schempp*: "[W]hat are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment" violates "the Constitution." 374 U.S. at 222. This secular-purpose-and-effect test was articulated and utilized without controversy in a multitude of cases predating *Lemon.*[3]

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[2] *E.g.*, *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam); *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Torcaso v. Watkins*, 367 U.S. 488 (1961).

[3] *E.g.*, *Torcaso*, 367 U.S. at 489-90 (invalidating law because "the purpose or effect" favored god-believers over atheists); *Two Guys from Harrison-Allentown, Inc. v. McGinley*, 366 U.S. 582, 598 (1961) ("neither the statute's purpose nor its effect is religious"); *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961) (evaluating "the purpose or effect"); *McGowan v. Maryland*, 366 U.S. 420, 445 (1961) ("The present purpose and effect . . . is to provide a uniform day of rest for all citizens."); *Engel v. Vitale*,

The majority opinion in *American Legion* (Parts I, II-B, II-C, III, and IV) held that: (1) certain old monuments should be scrutinized with a presumption of constitutionality; and (2) the Bladensburg Cross was constitutional because its purpose and meaning were predominantly secular. The portions of Justice Alito's opinion that criticized *Lemon* and proposed that courts "look[] to history for guidance"—Parts II-A and II-D—failed to garner a majority.[4] And although Part II-B outlined four considerations that "*counsel against* efforts" to apply *Lemon* in certain cases and "*toward* application of a presumption of constitutionality" (emphasis added), *infra*, these words don't overrule *Lemon* or other Supreme Court cases requiring a governmental secular purpose. *Meggs*, 87 F.3d at 462; *Agostini v. Felton*, 521 U.S. 203, 237-38 (1997) (lower courts must *not* "conclude our more recent cases have, by implication, overruled an earlier precedent").

Indeed, *American Legion*'s treatment of *Lemon* is no different from *Van Orden v. Perry*, 545 U.S. 677, 686 (2005)'s treatment of *Lemon*, which did not stop the Court from applying *Lemon* in *McCreary* the very same day. As the District

370 U.S. 421, 436 (1962) (finding unconstitutional "governmental endorsement" of religion); *Epperson*, 393 U.S. 97 (statute lacked secular purpose); *Bd. of Ed. of Cent. Sch. Dist. No. 1 v. Allen,* 392 U.S. 236 (1968) (statute had a "secular legislative purpose and [] effect"); *Walz v. Tax Commission*, 397 U.S. 664, 669-70 (1970) ("Each value judgment under the Religion Clauses must therefore turn on whether particular acts in question are *intended* to establish or interfere with religious beliefs and practices or have the effect of doing so.") (emphasis added); *Gillette v. United States*, 401 U.S. 437, 450 (1971) (the "Establishment Clause stands at least for the proposition that when government activities touch on the religious sphere, they must be secular in purpose . . . and neutral in primary impact.").

[4] Slip op. at *12-16, *24-25. Justice Kagan disagreed with these sections. *Id.* at *47. Justices Thomas and Gorsuch only concurred in the judgment. *Id.* at *49-66.

Court cogently explained (and this Court agreed): "The Supreme Court can [ignore *Lemon*], as it did in *Van Orden*. But as the Tenth Circuit has said: 'While the Supreme Court may be free to ignore *Lemon*, this court is not.'" DE-41 at 21 n.9. [5] But crucially, *American Legion* did not truly "ignore" *Lemon*; if anything, it reaffirmed the importance of the secular purpose requirement, *infra.*

### B. *American Legion* is entirely faithful to the longstanding secular purpose requirement.

Although *American Legion*—like *Van Orden*—was professedly decided without applying *Lemon*, the fractured decision did not discard *Lemon* or the longstanding Establishment Clause principles that underlie it. Quite the opposite. While attempting to explain why the "*Lemon* test" is difficult to apply in cases involving old displays with unknown or multiple purposes, the Court in fact scrutinized purpose and effect just as it would under *Lemon*. Justice Kagan brought this point home when she wrote: "I think that test's focus on purposes and effects is crucial in evaluating government action in this sphere—*as this very suit shows*." Slip op. at *47 (Kagan, J., concurring in part) (emphasis added).

Regarding purpose, the Court found that the government only "acquired the Cross and the land on which it sits [in 1961] in order to preserve the monument and address traffic-safety concerns." *Id* at *15-16. Justice Breyer added that "the organizers of the Peace Cross acted with the undeniably secular motive of commemorating local soldiers." *Id*. at *39-40 (Breyer, J., concurring).

[5] *See also Glassroth v. Moore*, 335 F.3d 1282, 1295-96 (11th Cir. 2003); *King v. Richmond Cnty*., 331 F.3d 1271, 1276 (11th Cir. 2003).

Regarding effect, the majority noted that the cross "took on an added secular meaning when used in World War I memorials." *Id.* at *35. The "image used in the Bladensburg memorial" had become a "symbol of sacrifice in the [first world] war" rather than a symbol of Jesus Christ. *Id.* at *11-13. The Court upheld the memorial precisely because the cross's "religious associations are no longer in the forefront." *Id.* at *31. Justice Breyer agreed that "the secular values inscribed on the Cross and its place among other memorials strengthen its message of patriotism and commemoration." *Id.* at *40 (Breyer J., concurring).

Thus, just like *Van Orden*, the Court remained faithful to the secular purpose and effect requirements, irrespective of the *Lemon* "test."[6]

## III. The Bayview Cross is not entitled to a presumption of constitutionality.

### A. This case does not fit into the narrow category of cases entitled to a presumption.

*American Legion* added a presumption of constitutionality to the analysis for certain longstanding displays. There is no indication that this presumption would apply to monuments with a decidedly and unequivocal religious purpose, as here:

> For at least four reasons, the *Lemon* test presents particularly daunting problems in cases . . . that *involve the use, for ceremonial, celebratory, or commemorative purposes*, of words or symbols with religious associations. Together, these considerations counsel against efforts to

[6] Recall in *Van Orden*, after criticizing *Lemon* as unworkable, the plurality in fact evaluated purpose and found "no evidence of such" a "primarily religious purpose in this case." 545 U.S. at 691 n.11. Justice Breyer likewise evaluated purpose and found that the donor group's efforts "to find a nonsectarian text underscore[d] the group's ethics-based motives." *Id.* 701-02. (Breyer, J., concurring). And the display's placement in a museum-like context suggested that the state intended the "nonreligious aspects of the tablets' message to predominate." *Id*. at 701.

> evaluate such cases under *Lemon* and toward application of a presumption of constitutionality for *longstanding* monuments[.]

Slip op. at *22-23 (emphasis added). Those reasons were: (1) "identifying [an old display's] original purpose or purposes may be especially difficult;" *id*. at *23 (2) "as time goes by, the purposes associated with an established monument, symbol, or practice often multiply;" *id.* at *24; (3) "[t]he 'message' conveyed . . . may change over time;'" *id.* at *26; and (4) "removing it may no longer appear neutral, especially to the local community for which it has taken on particular meaning." *Id.* at *27.[7]

Before addressing each in turn, as a threshold matter, this case does not fit into the narrow category of cases contemplated by the Court. The Bayview Cross is not maintained for secular "ceremonial, celebratory, or commemorative purposes." *Id.* at *22. It is maintained for the sole purpose of "Easter Sunrise Services" R.387.

### B. None of the four considerations undergirding the presumption of constitutionality apply to this case.

#### 1. The purpose is known, undisputed, and patently religious.

It is not remotely difficult to identify Bayview Cross's original purpose, as it may be for other older monuments. The Bladensburg Cross (1919) was nearly a century old—twice as old the Bayview Cross (1969).[8] In *American Legion*, the Court did not know "why the committee chose the cross." *Id.* at *13; *see also id.* at *37.

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[7] Justice Gorsuch criticized this presumption as unworkable and unprincipled: "it's hard not to wonder: How old must a monument, symbol, or practice be to qualify for this new presumption? . . . And where exactly in the Constitution does this presumption come from?" *Id.* at *63-64 (Gorsuch, J., concurring the judgment).

[8] A temporary wooden cross was used for some, but not all, of the Easter services prior to 1969. R.78, 83, 93, 146, 167, 174, 188-91, 197, 415; DE-22 at 3. The 1951, 1953, and 1955 services used cross-shaped flower arrangements. R.146, 167, 174.

But "scrutinizing purpose does make practical sense" where "an understanding of official objective emerges from readily discoverable fact." *McCreary*, 545 U.S. at 862. Here, the District Court found that "based on the undisputed facts," the "Bayview Cross clearly has a primarily—*if not exclusively*—religious purpose." DE-41 at 19. The minutes of the 1969 meeting make plain that the City approved the Cross solely for "Easter Sunrise Services," which city officials deemed "a very worthwhile project." R.53. *See also* R.206, 416; DE-22 at 4.

This Court also had no difficulty finding that the Cross was "'scheduled to coincide with the annual Easter Sunrise Service," and "has continued to serve as the location for an annual Easter sunrise program." Op. 3; DE-41 at 10.

**2. The Cross's purpose has not changed or multiplied.**

In *American Legion*, the Court found that while the original purpose for the Cross was to honor area soldiers, the government's purposes in acquiring it were different (viz., for traffic and safety concerns). Slip op. at *15-17, *29.

But the Bayview Cross's original purpose of aiding in the celebration of Jesus' resurrection has remained its sole purpose to this day. R.415-16. Judge Vinson professed that he was acutely familiar with this Cross (both because he served as the Jaycees' president shortly after the Cross was erected and because he walks by the Cross multiple times a week) and was certain it remains "primarily associated with the Easter Sunrise Service." Tab TR, at 3:9-16, 53:6-9; DE-30-1 at 3, 65-72. This Court agreed that the Cross "has continued to serve as the location for an annual Easter sunrise program." Op. 3. City officials aptly refer to the Cross site as the "Sunrise Service Area." R.401.

That the Bayview Cross's purpose has not changed or multiplied is not surprising. Unlike the Bladensburg Cross, the Bayview Cross has always been owned by the City. The majority specified that "retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones." Slip op. at *28. The Bladensburg Cross was erected by private citizens on land thought to be owned by the American Legion (long before the Establishment Clause was officially incorporated to the states in *Everson v. Board of Education*, 330 U.S. 1 (1947)). Decades later, in 1961, the government acquired it for "traffic-safety concerns." Slip op. at *15-16. Conversely, in 1969, the City here erected the Bayview Cross anew and solely in furtherance of worship. R.53.

**3. The meaning of the Bayview Cross has not changed.**

The majority's third rationale was that, "[w]ith sufficient time . . . [t]he community may come to value [religious displays] without necessarily embracing their religious roots." Slip op. at *26. While there was ample evidence in *American Legion* that the public embraced the Bladensburg Cross as a secular war memorial, no such evidence exists here, *supra.* Plaintiffs, the City, and community members all plainly view this Cross as an expression of Christian faith.[9]

Nor is a permanent cross even integral to the annual Easter Sunrise Services,

[9] The Facebook page, "*Keep Bayview Cross*," is thoroughly religious, regularly sharing Christian images and posts, including one at least 78 people "liked" declaring a gathering at the cross "for a time of prayer, worship and fellowship" as being "about Christians coming together, outside the church walls, making a stand for Christ and their faith." R.45-46. The mayor also acknowledged the cross's religious message by expressing that "there is always a place for religion in the public square." R.248.

which can continue as they had for years before the permanent Cross. Additionally, dozens of other Easter services are held annually in Pensacola. R.244-46.

**4. Because time has not altered the religious purpose and meaning of this Cross, its removal is the only neutral action.**

Lastly, as time has not imbued the Bayview Cross with any secular historical significance, but has instead only compounded its same religious meaning, moving the cross off of public property is the neutral action in this case, not one which is "hostile" to religion. Moreover, in *American Legion*, due to its age and its unique exposed aggregate concrete composition, the removal of the Bladensburg Cross would have been costly and potentially fatal to the already crumbling structure. Oral Arg. Tr. 6:19-22.[10] There is no indication the removal of this Cross poses such risks.

To be sure, not every Justice on the majority shared Justice Alito's opinion that removing that cross would be hostile to religion. Justice Kavanaugh even *proposed* that the state enact a law "requiring removal of the cross or transfer of the land." Slip op. at *46 (Kavanaugh, J., concurring). He even went so far as to suggest that "the people of Maryland can amend the State Constitution" to have the Cross removed. *Id.* These suggestions appear grounded in the recognition that keeping religion out of government's hands best enables religion to "flourish according to the zeal of its adherents." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).[11]

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[10] As discussed in the government's Opening Brief in *American Legion*, 18-18ts at 42, the Bladensburg Cross "was designed and constructed by the sculptor John Joseph Earley, an innovator in concrete and an early figure in the Art Deco movement."

[11] If the City retains control over the Cross, it will be required to allow members of other faiths to co-opt the Cross for their own purposes, including for Satanic worship on Easter. Appellants' Br. at 24; Dist. Ct. Oral Argument Tr. 43:9-17.

## IV. Even if applicable, Bayview Cross's religious purpose and meaning overcome the presumption of constitutionality.

Ultimately, the Court upheld the Bladensburg Cross, not because it was old, but because it served a secular purpose and conveyed a primarily secular meaning as an historic World War I memorial. This conclusion was supported by decades of literature, poetry, and artwork and a robust record featuring expert reports discussing the cross's secular meaning as a World War I symbol. *See* Parts I-A, I-B, II-C, III.

### A. The Bayview Cross serves a primary religious purpose.

*American Legion* and *Van Orden* do not sanction displays serving a primarily religious purpose, *supra*. Again, the sole purpose of Bayview Cross is to serve as a holy object for "Easter Sunrise Services" (R.387)—a blatantly religious purpose.

### B. The Bayview Cross has no association with World War I.

The Bladensburg Cross's status as a historic memorial to local soldiers killed in World War I was critical, if not dispositive, to its constitutionality. The case hinged on both the highly unique "role of the cross in World War I memorials," Slip op. at *28, and secular trappings on the display itself.[12] *See id.* at *35 ("Due in large part to the image of the simple wooden crosses that originally marked the graves of American soldiers killed in the war, the cross became a symbol of their sacrifice, and the design of the Bladensburg Cross must be understood in light of that background"); *id.* at *29 (unlike in other wars, the "solemn image of endless rows of white crosses became inextricably linked with and symbolic of the ultimate price paid by 116,000 soldiers"); *id.* at *39-40 (Breyer, J., concurring) ("The Latin cross

[12] These included a plaque naming 49 soldiers, "Valor," "Endurance," "Courage," and "Devotion" on the base, and a Woodrow Wilson quote. *Id.* at *14-15.

is uniquely associated with the fallen soldiers of World War I"); *id.* at *45 (Kavanaugh, J., concurring) (upholding the "Bladensburg Cross [because it] commemorates soldiers who gave their lives for America in World War I.").

The Bayview Cross has *no* connection to World War I.

### C. The Bayview Cross does not commemorate individual soldiers or any individuals for that matter.

The Court made clear: "it is surely relevant that the monument commemorates the death of particular individuals." *Id.* at *37. During World War I, such "memorials took the place of gravestones." *Id.* at *30. That Bladensburg Cross was dedicated to 49 individuals, who were named on a large plaque, was constitutionally significant. The Court reasoned that any faith associated with the memorial was attributable to the individual soldiers, *not the government*. *Id.* at *23, *30.[13]

The Bayview Cross is not a memorial of any kind, much less a war memorial. "Despite briefly implying that the Bayview Cross is a war memorial in its motion," the District Court found that the City did not "tender any evidence to suggest that the cross was dedicated as a war memorial or intended to be one." DE-41 at 16 n.4. Nor would such evidence "alter the fact that the Bayview Cross obviously had—and still has—a primarily religious purpose." *Id*.

The City also vaguely claimed—for the first time on appeal—that the Cross is a tribute to the Pensacola Jaycees. Appellants' Br. at 18. Again, the City approved the Cross for the sole purpose of "Easter Sunrise Services." R.53. There is no

[13] *Accord Salazar v. Buono*, 559 U.S. 700, 715 (2010) (plurality) (the WWI cross erected in the desert without knowledge or approval by the government was "not an attempt to set the *imprimatur* of the state on a particular creed.") (emphasis added).

contemporaneous mention anywhere in the record of the City wanting only to honor the Pensacola Jaycees' civic service or attempt to "unite the community during a national crisis," which are plainly ad-hoc rationalizations. Appellants' Reply Br. 23. Indeed, the City admitted that the Cross was intended to be a "permanent marker" for Easter services. DE-22 at 2; DE-30 at 13; R.372-73.

**D. The Bayview Cross's history is religious and discriminatory.**

The Bayview Cross's history is nothing but religious. The theme of Pensacola's first Easter Sunrise Service (1941)—the impetus for the permanent Cross—was "The Risen Christ." R.57-69, 415; DE-22 at 2. Moreover, in 1970, the year immediately following the Cross's dedication, the theme of the Easter Sunrise service was to convert "doubters" into "believers" and the sermon attributed a decline in morality to secularism. R.210-13, 416. In *American Legion*, the Court warned that "[t]he monument would not serve that [secular] role if its design had deliberately disrespected" religious minorities. Slip op. at *36; *accord id.* at *40 (Breyer, J., concurring) (same). The Bayview Cross has not stood without controversy either. Op. 34; DE-39-2.

**E. The Bayview Cross's meaning is wholly religious.**

It is firmly settled that, irrespective of the *Lemon* test, the government cannot approve "the core beliefs of a favored religion over the tenets of others." *McCreary*, 545 U.S. at 880. The government's display of a religious symbol must "convey[] a predominantly secular message." *Van Orden*, 545 U.S. at 702 (Breyer, J., controlling concurrence). This holds true under *Van Orden* and *American Legion*; both cases require the secular meaning of a dual-meaning display to *predominate.* Slip op. *24,

*31, *35. Judge Vinson, who has detailed personal knowledge of the Bayview Cross, readily found that the Bayview Cross carries no "dual significance." DE-41 at 16.

**1. The Bayview Cross is *used* exclusively for religious worship.**

To "determine the message the [display] conveys," the Court should "examine how the [display] is *used*." *Van Orden*, 545 U.S. at 701-02 (Breyer, J., concurring). The display in *Van Orden* was upheld largely because it was not used for "religious activity." *Id.* (emphasis added). In *American Legion*, the Court likewise found it relevant that "[s]ince its dedication, the Cross has served as the site of patriotic events honoring veterans." Slip op. at *15. By sharp contrast, the Bayview Cross has always functioned as a holy object for religious observance.[14] Its primary if not sole usage has been confined to annual Christian worship services.[15]

**2. The Bayview Cross has no secular features.**

In *American Legion*, the Justices agreed that "the secular values inscribed on the Cross and its place among other memorials strengthen its message of patriotism and commemoration." *Id.* at *40 (Breyer, J., concurring); *Id.* at *14-15 (majority).

The Bayview Cross has no secular trappings. A plaque is affixed to the amphitheater but even it specifically refers to "Easter Sunrise." R.350.

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[14] Thus, *Freedom from Religion Found., Inc. v. Cty. of Lehigh*, 2019 U.S. App. LEXIS 23681 (3d Cir. 2019) is inapposite, as the seal was not used for worship services.

[15] The City could not produce public notices or event permits for any other type of event held at the Cross. R.366-70. And although the City claimed, on appeal, that the Cross has occasionally been the site for "Veterans Day and Memorial Day events" (Appellees' Br.22), it offered no details about these events.

### 3. The Bayview Cross stands alone, not in a museum-like context.

"When the government initiates an effort to place [a religious] statement *alone* in public view, a religious object is unmistakable." *McCreary*, 545 U.S. at 869 (emphasis added). Similar to the display in *Van Orden*, 545 U.S. at 681, the Bladensburg Cross is situated in Veterans Memorial Park amongst "numerous additional monuments" honoring "the veterans of other conflicts," two of which were "38-foot-tall." Slip op. at *29, *15.

The Bayview Cross, however, is one of only two permanent displays in the entire 28-acre park; the other is a smaller unrelated memorial to a deceased resident. R.374-75. As the District Court found, "the presence of that second monument in the park does not alter the fact that the Bayview Cross obviously had—and still has—a primarily religious purpose." DE-41 at 16 n.4.

## CONCLUSION

Nothing in *American Legion* allows the government to erect, fund, and maintain a Latin cross for Christian worship services. The longstanding secular purpose requirement enshrined in *Lemon* forecloses this result and remains binding on this Court. For the foregoing reasons, we ask this Court to affirm its prior ruling.

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