

Cross-References: Impacting Memorial Legacy in American Legion v AHA”

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Abstract

“on what theory are these (symbols) permissible? . . . What’s the theory”

Justice Elena Kagan, Oyez

"I don't see the daylight between proselytizing and endorsement," Gorsuch said. "It seems to me that you are taking us right back to the dog's breakfast you've warned us against."¹

Justice Neil Gorsuch

AMERICAN LEGION ETAL. v. AMERICAN HUMANIST ASSN. ETAL.

presents a case rich in arguments about the legacy impact of memorials, both individually and as part of the public memory. Our purpose in this study is to analyze these impacts, drawing from the Oyez in United States Supreme Court Case No. 17–

¹ [Establishment Clause](#) In Giant Cross Case, Justices Struggle to Clean Up a 'Dog's Breakfast' of Confusing Precedents [Jacob Sullum](#) | 2.28.2019 3:30 PM

<https://reason.com> › 2019/02/28 › *in-giant-cross-case-scotus-struggles-to*

1717, argued February 27, 2019. From a definitional, contextual, interpretive and purposive vantage point, the impact is symbolically significant.

The venue for this rhetorical controversy is situated

In Bladensburg, Maryland, as part of a memorial park honoring veterans is a 40-foot tall cross, which is the subject of this litigation. Construction on the cross began in 1918, and it was widely described using Christian terms and celebrated in Christian services. In 1961, Maryland-National Capital Park and Planning Commission acquired the cross and the land, as well as the responsibility to maintain, repair, and otherwise care for the cross. The Commission has spent approximately \$117,000 to maintain and repair the cross, and in 2008, it set aside an additional \$100,000 for renovations.

Several non-Christian residents of Prince George's County, Maryland, expressed offense at the cross, which allegedly amounts to governmental affiliation with Christianity. American Humanist Association is a nonprofit organization advocating for separation of church and state. Together, AHA and the individual residents sued the Commission under 42 U.S.C. § 1983, alleging that the Commission's display and maintenance of the cross violates the Establishment Clause.²

A preliminary examination indicates implicit and explicit underlying theories for interpreting symbols. Alito's majority opinion relies on progression from religious symbolism to historic symbolism for things like the Latin cross...the crosses in the US cemeteries in France as memorials to fallen dead rather than on symbols of Christianity, for example. He spends a lot of ink explicating how formerly strictly religious symbols might not be so strictly religious any more. Breyer's concurrence goes there as well, saying that something erected more recently might qualify for protection. Beyond that, the framing of media coverage of the arguments and decision in the case provide a glimpse of how such long-cherished memorials are reflected in the public memory and how that memory might be affected in future years.

Our study identifies the rhetorical framework constructed in the case, exploring these research questions:

RQ1: How does rhetoric function to create a discourse of a memorial's symbolic impact?

RQ2: How do media function to create a framework for a memorial's symbolic impact as part of the public memory?

Questions for Allen (from Edwards)

² Oyez. American Legion ET AL. v American Humanist Assn. ET AL.
<https://www.oyez.org/cases/2018/17-1717>

Q1: What is the case stasis?

The constitutionality of the Bladensburg Cross, a Maryland World War I Veterans' Memorial "Peace" Cross. Does the 40' tall cross violate the Establishment Clause?

Petitioner American Legion contends it does not; Respondent American Humanist Association (AHA) claims it does. The U. S. Supreme Court ruled for American Legion in a 7-2 decision issued June 20, 2019.

Q2: What does your rhetorical analysis of American Legion v AHA yield?

Contested context. Context is a shape shifter. Context is revealed in two distinctive ways, creating distinct arguments and interpretations, yielding a semantic hierarchy of meaning. Rather than the way interlocutors typically invoke context as a catch-all term for surrounding elements, context itself emerges as interpretive terrain.

Q3: To what does context add up for American Legion versus AHA?

American Legion invokes contextual elements focusing on **SHAPE: story, history, affinity, permanence and eloquence.**

AHA focuses on contextual elements including **SHIFTER: size, hierarchy, imposition, fairness, time, exigence and resistance.**

Q4: What is the significance of this linguistic equation for rhetorical/legal analysis?

Context is not simply a conglomeration of elements that make text meaningful, it is a contested collection of selected elements. When we say that we need to take context into account in determining various matters, we may be referring to very different elements of that context.

Q5: When, if ever, is it OK (permissible) to take something out of context?

Whenever we do not quote the entirety of a text we are, in a literal sense, taking it out of context. Quoting the First Amendment verbatim, for example, without quoting the entire Bill of Rights, by definition takes it out of context. The key is to not distort or manipulate meaning by taking something out of context.

Questions from Allen for Edwards:

Q1: This is a local story that seems to have gone national both because of the issues involved and the U.S. Supreme Court's decision to accept the appeal. Did the major networks, newspapers, cable outlets, and other outlets cover the arguments before the court?

Short answer: yes, they did. For this research I examined 16 local and national journalistic outlets and found that all of them covered the oral arguments at least to some degree. The two local newspapers, the *Baltimore Sun* and *Baltimore Daily*

Record each carried articles, though the *Sun* merely carried an Associated Press article. Local television stations WBAL, WBFF, and WMAR all carried the same story, produced by the Capital News Service in Baltimore. That's a reporting organization sponsored by the University of Maryland's school of journalism. WJZ carried a report announcing the oral arguments earlier that week but did not run a story covering the actual oral arguments. National media all covered the arguments, including all four major networks, cable networks CNN, Fox News, and MSNBC, plus the *New York Times*, *Washington Post*, *National Review*, and the *Associated Press*.

Q2: Was there a difference between the national press coverage and local press coverage of this issue?

Unsurprisingly, the answer to that question is also yes. Local outlets tended to put more local flavor on the story with more local interviews. The exception was the *Baltimore Sun*, which simply ran the Associated Press article reporting on the arguments. Nationally the coverage tended to examine issues as they apply nationwide, rather than locally.

Q3: Was there a discernible frame, or theme, in this coverage? If so, what was that frame?

There definitely was a clear frame that said the arguments showed the members of the U.S. Supreme Court appeared likely to allow the cross to remain because its secular meaning overpowered potential religious symbolism, but that the Court was anxious not to issue a sweeping ruling that would have broad impact for other cases. This frame is demonstrated by headlines:

Baltimore Sun: "Supreme Court Seems Inclined to Retain Cross Memorial in Maryland."

Washington Post: Supreme Court Seems to Seek Narrow Way to Uphold Cross that Memorializes War Dead."

New York Times: "Supreme Court Seems Ready to Allow Cross Honoring War Dead"

Fox News: "Supreme Court Appears Inclined to Let 40-Foot 'Peace Cross' Stand on Public Land"

CNN: "Supreme Court Suggests Memorial Cross Does Not Violate Separation of Church and State"

Q4: Were there other themes, and if so, what were they?

There were definitely other frames. For instance, in headlines, three outlets pointed out the Court's dilemma in finding a balance between the cross having greater historical meaning as a war memorial than as a symbol of Christianity, which might have broad impact for other cases dealing with similar facts and issues. All stories

discussed that issue, though to varying depth. In a companion theme, the stories all discussed how the Court's ruling could have a direct effect on future cases. They pointed out that a broad ruling about crosses as non-religious symbols would open the door to not only crosses but other religious symbols such as the Ten Commandments, and such. The Court has had a mixed record dealing with religious symbols in government locations. For instance, the Court voted to allow a Ten Commandments frieze on a public building in Alabama, saying tradition and history had made it largely a secular memorial, while ruling that a Ten Commandments display in Kentucky was an unconstitutional violation of the Establishment Clause of the First Amendment because its meaning was overtly religious. All of the stories discussed the *Lemon v Kurtzman* ruling, and its resulting three-part test, that required the law under consideration have a legitimate secular purpose, that the law not have the primary effect of either advancing or inhibiting religion, and not result in an excessive entanglement between government and religion. But the stories pointed out that the *Lemon* test dealt with the constitutionality of government provision of financial aid for parochial school systems, which deal with vastly different issues than the Bladenburg cross case. Some of the stories also pointed out that certain justices, notably Justice Gorsuch, suggested that it is time to revisit the ruling in *Lemon*. Most of the stories also pointed to liberal justices Stephen Breyer and Elena Kagan's comments suggesting their support for a narrow ruling in favor of this cross. Most pointed out that Breyer was willing to keep this cross because it had stood for nearly 100 years and was in keeping with World War One era tradition of placing crosses as a memorial for war dead. They quoted Breyer as saying "but no more, this is a different country now," indicating that he would not support a sweeping change that allowed crosses and other religious symbols to be generally approved. Kagan seemed to rely on the historical tradition of early 20th century remembrance of war dead by crosses to justify keeping the Maryland cross. Some of the stories paid more attention to the disagreement between the decision of the District Court of Maryland, which found in favor of the American Legion, and the Fourth Circuit Court of Appeals, which reversed that finding and ruled in favor of the Humanist Association. The district court adopted the argument that the cross's historicity overcame objections of the religious symbolism of the cross. The Fourth Circuit, however, found exactly the opposite, saying the cross had inherent religious symbolism and historicity could not overcome that meaning.

AH A

Size

Hierarchy

Imposition

Fairness

Time

Exigence

Resistance

AM Legion

Story History

Affinity Permanence Eloquence

C
O
N

CONTEXT