Moot Supreme Court Case

Salazar v. Buono

The question at issue in this case is whether an 8-foot cross in the Mojave National Preserve constitutes an unconstitutional governmental endorsement of religion.

The cross was first erected by the Veterans of Foreign Wars in 1934 and has been maintained as a war memorial by the National Park Service.

The American Civil Liberties Union filed suit in 2001 on behalf of former park service Frank Buono, a Roman Catholic who alleged that the cross violated the Establishment Clause of the First Amendment. The suit also noted that the park service had denied a request to have a Buddhist shrine erected near the cross. U.S District Court Judge Robert J. Timlin of the Central District of California agreed with Buono, and ruled in 2002 that the "primary effect of the presence of the cross" was to "advance religion."

Congress responded in 2004 by passing legislation directing the Department of the Interior to transfer about an acre of land to the Veterans of Foreign Wars in exchange for a privately owned plot nearby.

On Sept. 6, 2007, a three-judge panel on the U.S. Court of Appeals for the Ninth Circuit upheld the lower court ruling and invalidated the land transfer, noting that "carving out a tiny parcel of property in the midst of this vast preserve — like a donut hole with the cross atop it — will do nothing to minimize the impermissible governmental endorsement" of the religious symbol.

The Bush administration appealed the ruling to the U.S. Supreme Court, arguing that the "seriously misguided decision" will require the government "to tear down a cross that has stood without incident for 70 years as a memorial to fallen service members." In a friend-of-the-court brief, the VFW, the American Legion and other veterans said the appeals court ruling could trigger legal challenges to the display of crosses at Arlington National Cemetery and elsewhere.

Question presented: Whether an Act of Congress directing the land be transferred to a private entity is a permissible accommodation.