

IN THE SUPREME COURT OF THE UNITED STATES

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No. 17-1717

THE AMERICAN LEGION, ET AL., PETITIONERS

v.

AMERICAN HUMANIST ASSOCIATION, ET AL.

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No. 18-18

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,  
PETITIONER

v.

AMERICAN HUMANIST ASSOCIATION, ET AL.

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in these consolidated cases and be allowed ten

minutes of argument time. The United States has filed a brief as amicus curiae supporting petitioners. Petitioners have consented to this motion and have agreed to cede ten minutes of argument time to the United States.

1. These cases present the question whether the Memorial Cross -- a 93-year-old memorial to American servicemembers who died in World War I -- violates the Establishment Clause because the memorial bears the shape of a Latin cross. The United States has filed a brief as amicus curiae supporting petitioners. The government's brief contends that the Memorial Cross is constitutional by reference to both the historical understanding and more modern understandings of the Establishment Clause.

2. The United States has a substantial interest in the resolution of the question presented. In 2015, the National Park Service placed the Memorial Cross on the National Register of Historic Places. Other memorial crosses stand on federal property, including two World War I memorial crosses in Arlington National Cemetery: the Argonne Cross and the Canadian Cross of Sacrifice.

The United States has participated in oral argument as a party or as amicus curiae in multiple cases before this Court involving challenges to passive displays under the Establishment Clause. See, e.g., Salazar v. Buono, 559 U.S. 700 (2010); McCreary Cnty. v. American Civil Liberties Union of Ky., 545 U.S. 844 (2005); Van Orden v. Perry, 545 U.S. 677 (2005). In light of the substantial federal interest in the question presented, the United States'

participation in oral argument could materially assist the Court in its consideration of these cases.

3. Petitioners have moved to enlarge the time for argument by ten minutes for each side and to divide petitioners' argument time equally between petitioners in No. 17-1717 and petitioner in No. 18-18. The United States does not oppose an enlargement of argument time or a division of argument time between petitioners, provided that the United States is allotted the ten minutes of argument time that petitioners have agreed to cede to the government.

Respectfully submitted.

JEFFREY B. WALL  
Acting Solicitor General\*  
Counsel of Record

JANUARY 2019

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\* The Solicitor General is recused in these cases.