

**In the Supreme Court of the United States**

CITY OF PENSACOLA, FLORIDA, ET AL.

*Petitioners,*

v.

AMANDA KONDRAT'YEV, ET AL.

*Respondents.*

*On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Eleventh Circuit*

**BRIEF FOR *AMICUS CURIAE*  
JUNIOR CHAMBER INTERNATIONAL (JCI) FLORIDA  
IN SUPPORT OF PETITIONERS**

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## QUESTIONS PRESENTED

1. Whether plaintiffs have standing to sue under the Establishment Clause when their only alleged injury consists of the feelings of “offense” produced by observing a passive religious display.
2. Whether, under *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), passive religious displays with a long historical pedigree must be torn down because of claims that they have the purpose or effect of endorsing religion.

## TABLE OF CONTENTS

QUESTIONS PRESENTED .....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES .....	iv
INTEREST OF AMICUS CURIAE .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	3
I. Pensacola Jaycees built the current Bayview Cross to preserve a community landmark with a long history as the focal point of civic gatherings. ....	3
A. Pensacola Jaycees was a secular civic organization that served the Pensacola community for nearly a century. ....	3
B. The Bayview Cross has been a Pensacola landmark for over seven decades without controversy. ....	6
II. Petitioners’ refusal to remove the Bayview Cross does not violate the Establishment Clause. ....	8
A. The use of crosses, including the Bayview Cross, to commemorate military sacrifice is part of the Nation’s heritage and tradition.....	9

B. The 75-year history of the Bayview  
Cross and the context surrounding its  
donation and use are consistent with  
the purposes of the Establishment  
Clause..... 10

CONCLUSION..... 11

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971) .....	8
<i>Marsh v. Chambers</i> , 463 U.S. 783 (1983) .....	9
<i>Salazar v. Buono</i> , 559 U.S. 700 (2010) .....	9, 10
<i>Town of Greece v. Galloway</i> , 134 S. Ct. 1811 (2014) .....	i, 9, 10
<i>Utah Highway Patrol Ass’n v. Am. Atheists, Inc.</i> , 565 U.S. 994 (2011) .....	8
<i>Van Orden v. Perry</i> , 545 U.S. 677 (2005) .....	4, 9, 10, 11
<b>Other Authorities</b>	
Alexandra Sandstrom, <i>God or the divine is referenced in every state constitution</i> , Pew Research Center (Aug. 17, 2017) .....	4
Supreme Court Rule 37.2(a) .....	1

## INTEREST OF AMICUS CURIAE<sup>1</sup>

This case is important to JCI Florida because it directly involves a cross (the “Bayview Cross”) built by Pensacola Jaycees, Inc. (“Pensacola Jaycees”), a closed chapter of JCI Florida that engaged in a long history of valuable community service. JCI Florida believes it is important to confirm its status and that of its local chapters as secular civic organizations dedicated to member and community development and to assert its right to support efforts to unify and strengthen local communities, even by means that may have religious as well as civic significance.

JCI Florida is a nonprofit organization established in 1924 as the second state organization of the United States Junior Chamber of Commerce. JCI Florida provides opportunities for young people between the ages of 18 and 40 to develop leadership and business skills through projects designed to address local issues to the benefit of the community. JCI Florida currently has chapters in Avon Park, Deland, Hollywood, Jacksonville, Key West, Keystone Heights, Lake Placid, North Miami, Ocala, Panama City, Silver Springs, SW Orlando, and Tampa.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. Neither a party, nor its counsel, nor any other entity other than *amicus curiae* and counsel has made a monetary contribution intended to fund the preparation or submission of this brief. All parties consented to the filing of this brief as required by Supreme Court Rule 37.2(a).

## SUMMARY OF THE ARGUMENT

Pensacola Jaycees enriched the Pensacola community for 89 years through numerous charitable and civic improvement programs organized in furtherance of the club's purpose to develop its members through community service. One of the most successful of these efforts was the Bayview Cross and associated Easter sunrise gatherings, first sponsored by the Pensacola Jaycees in 1941. That first gathering unified the community in a spirit of dedication and shared commitment to honoring the sacrifices of the country's military personnel. Those same purposes have continued to unite the Pensacola community in both secular and religious gatherings at the cross ever since. To preserve this community landmark, Pensacola Jaycees replaced the existing wooden cross with a more permanent concrete cross in 1969. The Bayview Cross has stood without legal objection for 75 years.

Despite this long, unblemished history, the Eleventh Circuit affirmed the district court judgment ordering the Bayview Cross to be removed. There is no basis in the Establishment Clause for such drastic action. The historical meaning of the Bayview Cross as a symbol of military dedication and sacrifice, the donation of the cross by a private secular organization in a secular setting, and the complete absence of legal challenge for 75 years satisfy constitutional requirements. The Court should grant certiorari to confirm the historical test revived by this Court's recent Establishment Clause jurisprudence.

## ARGUMENT

### **I. Pensacola Jaycees built the current Bayview Cross to preserve a community landmark with a long history as the focal point of civic gatherings.**

Pensacola Jaycees was a civic improvement organization that served the Pensacola community for 89 years until it ceased operation in 2011. Among the most popular of its many community enrichment programs was the Bayview Cross and related Easter sunrise gatherings, which Pensacola Jaycees began sponsoring in 1941. Both the original wooden cross and the current concrete cross built by Pensacola Jaycees in 1969 have been the site of countless religious and secular community gatherings. As a result, the Bayview Cross has become a Pensacola landmark with a history and tradition of commemorating past sacrifices made to preserve the country's freedoms.

#### **A. Pensacola Jaycees was a secular civic organization that served the Pensacola community for nearly a century.**

To obscure the historical meaning of the Bayview Cross in the Pensacola community, Plaintiffs suggested below that Pensacola Jaycees was a "faith-based organization[]." (C.A. R.E. Tab 31 at 4.) While Pensacola Jaycees' creed affirmed a belief in God, it did so with the proviso that "[e]ach Jaycee is free to interpret the creed in the light of his own conscience." (*Id.* Tab 30-1 at 19.) And Pensacola Jaycees bore none of the indicia of a faith-based

organization, such as association with a specific denomination, church membership and conduct requirements, or proclamation of a religious message.<sup>2</sup>

Instead, as both its purposes and its activities show, Pensacola Jaycees was a secular civic service organization. (See App. 84a (district court described the club as “a civic group”).) For much of its existence, including at the time the current Bayview Cross was built, Pensacola Jaycees was “a young man’s organization” dedicated to providing opportunities “for a young man to unleash the energy and intelligence within himself.” (C.A. R.E. Tab 30-1 at 4-5.) Pensacola Jaycees created those opportunities by (1) encouraging “civic interest,” (2) providing opportunities for the personal development of its members, and (3) engaging in community participation to “build better communities, states, and nations.” (*Id.* Tab 30-1 at 5, 23.) This happened at regular meetings, in which members could network and socialize, develop public speaking skills, and listen to community members speak on issues of local interest. (*Id.* Tab 30-1 at 9-10.) It also happened through participation in club- and member-initiated community programs and

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<sup>2</sup> If the statement affirming belief in God alone is enough to qualify Pensacola Jaycees as a faith-based organization, then the federal government and each of the fifty state governments likewise qualify as such. See *Van Orden v. Perry*, 545 U.S. 677, 683 (2005) (“[o]ur institutions presuppose a Supreme Being”); Alexandra Sandstrom, *God or the divine is referenced in every state constitution*, Pew Research Center (Aug. 17, 2017), <http://www.pewresearch.org/fact-tank/2017/08/17/god-or-the-divine-is-referenced-in-every-state-constitution/> (last visited Oct. 18, 2018).

service efforts. (See *Id.* Tab 30-1 at 13, 107-13 (listing a wide range of community improvement programs).)

During the course of its 89-year history, Pensacola Jaycees had a track record of successful community involvement and improvement. (C.A. R.E. Tab 30-1 at 107-13.) The chapter was first organized in 1922, just two years after the United States Junior Chamber of Commerce was founded. (*Id.* Tab 30-1 at 27; 30-3 at 2.) From that time until the chapter closed in 2011, its members were involved in countless charitable, community improvement, and governmental reform efforts in the Pensacola community. These included toy drives,<sup>3</sup> fundraisers,<sup>4</sup> children's and community sports events,<sup>5</sup> city cleanup and environmental programs,<sup>6</sup> community education, health, and safety efforts,<sup>7</sup> cultural events,<sup>8</sup> voter education and registration drives,<sup>9</sup> and city reform initiatives.<sup>10</sup> Pensacola Jaycees also engaged in larger-scale projects such as founding the municipal airport and a local park and spearheading creation of a nearby state park and a center for troubled teens. (*Id.* Tab

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<sup>3</sup> C.A. R.E. Tab 30-2 at 3; 36-1 at 2.

<sup>4</sup> *Id.* Tab 30-1 at 74, 63; 30-3 at 2.

<sup>5</sup> *Id.* Tab 30-1 at 41-42, 56, 62, 65; 30-2 at 3; 30-7 at 42; 36-1 at 2.

<sup>6</sup> *Id.* Tab 30-1 at 48-49, 64, 67; 30-8 at 37.

<sup>7</sup> *Id.* Tab 30-1 at 40-41, 48, 53-54, 56, 62, 65.

<sup>8</sup> *Id.* Tab 30-1 at 49-50, 55-56, 58, 61, 68.

<sup>9</sup> *Id.* Tab 30-1 at 56, 61, 67, 68.

<sup>10</sup> *Id.* Tab 30-1 at 60-61, 64.

30-1 at 46, 54-57, 62.) These and numerous other efforts garnered Pensacola Jaycees state and national awards. (*Id.* Tab 30-1 at 65, 68.)

**B. The Bayview Cross has been a Pensacola landmark for over seven decades without controversy.**

Consistent with its other efforts to enrich the Pensacola community, Pensacola Jaycees sponsored a nondenominational community Easter gathering at the site of a wooden cross erected in a corner of Bayview Park beginning in 1941. (C.A. R.E. Tab 30-2 at 2; 30-7 at 42, 46, 49.) The gathering was intended as a “symbol of dedication” and unity as the country faced the challenges of imminent war. (*Id.* Tab 30-7 at 47.) Planned with the cooperation of the local military installation, the gathering also provided an opportunity to support military personnel serving in Pensacola. (*Id.* Tab 31-10 at 6.) The event was so successful that organizers immediately began plans “to make it an annual feature in Pensacola.” (*Id.* Tab 30-7 at 49-50.)

The Pensacola community responded enthusiastically. Thousands attended the “annually popular” gathering. (*See, e.g.*, C.A. R.E. Tab 30-7 at 40; 30-8 at 3.) And numerous other Pensacola organizations, including the Boy Scouts, the Salvation Army, other civic clubs, and the local military installations, assisted Pensacola Jaycees in putting on the gathering. (*Id.* Tab 30-7 at 41-42, 45, 55-57; 30-8 at 5-6, 18.) While the gatherings involved a religious element, they were also seen as a time of remembrance “in commemoration of those who are away from home” serving the country in war

and “those who have departed,” having given the ultimate sacrifice for their country. (*Id.* Tab 30-3 at 2; 30-7 at 54-55; 30-8 at 6, 33.)

This spirit of dedication and remembrance extended beyond the annual Easter gathering. In harmony with the long running history of civic gatherings at Bayview Park, the cross became the site of community events to honor, and mourn the loss of, President Franklin Delano Roosevelt and to observe regular Memorial Day and Veterans’ Day commemorations. (C.A. R.E. Tab 30-3 at 2; 30-7 at 5.)

In light of the community’s embrace of the Bayview Cross as a place of remembrance, and consistent with the club’s purpose to serve “the good of the general public,” Pensacola Jaycees built and donated a bandstand to the City in 1949 to facilitate community gatherings at the site. (C.A. R.E. Tab 30-1 at 50-51; 30-2 at 2; 30-3 at 2; 30-7 at 54-55; 30-8 at 53, 55-56.) Twenty years later in 1969, Pensacola Jaycees built and donated a concrete cross to replace the pine cross that had stood for almost 30 years. (*Id.* Tab 30-1 at 51; 30-2 at 2; 30-3 at 2; 30-8 at 13.) The City of Pensacola did not pay for either the bandstand or the cross. (*Id.* Tab 30-2 at 2.) The City’s only involvement is to maintain the park and the various structures within it, an activity the City would undertake without regard to the nature or purpose of those structures and which results in de minimus costs related to the Bayview Cross of .03% of the City’s annual budget. (*Id.* Tab 30-2 at 3; 36-1 at 2-3; 41 at 2.)

The Bayview Cross and related sunrise gatherings quickly became part of the fabric of the Pensacola community. The Easter sunrise gathering was seen as a “traditional” event that became a seasonal “highlight[].” (C.A. R.E. Tab 30-7 at 30, 38, 45; 30-8 at 13.) And the Bayview Cross was regularly used by community members for a variety of purposes, both secular and religious. (*Id.* Tab 30-2 at 2-3; 30-3 at 2.) Thus, for 75 years, no legal objections were voiced regarding either the cross or the gatherings—until this lawsuit. (*Id.* Tab 30-2 at 4.)

## **II. Petitioners’ refusal to remove the Bayview Cross does not violate the Establishment Clause.**

Removal of the Bayview Cross is not required by the Establishment Clause. As the understandably frustrated district court recognized, there has been a “hodgepodge” of different tests for determining whether “displays of religious imagery” contravene the Establishment Clause. (App. 93a (quoting *Utah Highway Patrol Ass’n v. Am. Atheists, Inc.*, 565 U.S. 994 (2011) (Thomas, J., dissenting from denial of certiorari)). The Eleventh Circuit felt bound to follow the *Lemon* test, but this Court has been moving steadily toward a historical test that conflicts with the Eleventh Circuit’s decision.

**A. The use of crosses, including the Bayview Cross, to commemorate military sacrifice is part of the Nation’s heritage and tradition.**

Petitioners’ actions meet the historical test set out in the Court’s most recent Establishment Clause jurisprudence because the use of crosses as passive memorials is “deeply embedded in the history and tradition of this country.” *Van Orden v. Perry*, 545 U.S. 677, 688 (2005) (quoting *Marsh v. Chambers*, 463 U.S. 783, 786 (1983)); *see generally Salazar v. Buono*, 559 U.S. 700, 715-16, 718-19, 721 (2010) (recognizing the “historical meaning” attributable to publicly displayed crosses in our Nation).

In *Van Orden*, for example, the plurality upheld a Ten Commandments monument based on “the nature of the monument and . . . our Nation’s history.” *Id.* at 686. The monument was constitutional because it was consistent with “the rich American tradition of religious acknowledgments” and had a historical significance consistent with other local monuments. *Id.* at 690-92. More recently, the Court focused on “historical practices and understandings” to uphold a New York town’s practice of opening council meetings with prayer. *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1819, 1825 (2014) (the practice of legislative prayer “has become part of our heritage and tradition” and was not used in a context that would show government coercion or intimidation).

The Petitioners’ decision not to remove the Bayview Cross is no different. Like Ten Commandments displays and legislative prayer, the

practice of using crosses as public memorials is “part of our heritage and tradition.” *Id.* That tradition includes the use of crosses “to honor our Nation’s fallen soldiers” and to commemorate “heroic acts, noble contributions, and patient striving.” *Buono*, 559 U.S. at 715, 721. Crosses fill this historic, memorial role not just in Bayview Park, but in parks throughout this Nation. (App. 186a-223a (describing crosses memorializing those who served in the Nation’s wars from the Revolutionary War onward).) Like these crosses, the Bayview Cross is a passive monument that has historic significance to the Pensacola community as a “site of remembrance services” for those who have served in the Nation’s wars. (C.A. R.E. Tab 30-3 at 2; *see* 30-7 at 41-42, 47, 55; 30-8 at 6, 33.) Moreover, the long, litigation-free history of the Bayview Cross as a gathering spot for the community demonstrates that the cross has no coercive purpose. *See Van Orden*, 545 U.S. at 702.

**B. The 75-year history of the Bayview Cross and the context surrounding its donation and use are consistent with the purposes of the Establishment Clause.**

The message and context of the Bayview Cross, and the community’s adoption of it, further confirm the constitutionality of the Petitioners’ refusal to tear down the cross. *Van Orden*, 545 U.S. at 700-02. As with the Ten Commandments monument in *Van Orden*, the Bayview Cross conveys a dual religious and historical message. The cross is a recognized symbol of Christianity, but it is also a symbol of commemoration, and the only text associated with the Bayview Cross confirms that

message. (C.A. R.E. Tab 30 at 12 (dedicating bandstand to former Pensacola Jaycees president and noting the sponsorship and donation by Pensacola Jaycees).

Similarly, the context surrounding the Bayview Cross demonstrates the secular nature of both Pensacola Jaycees as donor and Bayview Park as the location of the cross. Like the Fraternal Order of Eagles in *Van Orden*, Pensacola Jaycees was “a private civic (and primarily secular) organization” whose donation and sponsorship is prominently acknowledged at the site—distancing the City from any religious message. *See Van Orden*, 545 U.S. at 701-02; *supra* at 3-6. Similarly, Bayview Park, like the Texas Capitol grounds, “suggests little or nothing of the sacred.” *Van Orden*, 545 U.S. at 702. In fact, Bayview Park has no relation either to the sacred or to the imprimatur of the government, distancing the Bayview Cross from any perception of coercive government involvement. Finally, the Bayview Cross has stood without legal challenge for 75 years, a timespan almost double the 40-year period Justice Breyer considered “determinative.” *Id.* at 702.

## CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

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Respectfully Submitted,

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