

No. 15-2597

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

AMERICAN HUMANIST ASSOCIATION;
STEVEN LOWE; FRED EDWARDS; BISHOP McNEILL,
Plaintiffs-Appellants,

v.

MARYLAND-NATIONAL
CAPITAL PARK AND PLANNING COMMISSION,
Defendant-Appellee;

THE AMERICAN LEGION;
THE AMERICAN LEGION DEPARTMENT OF MARYLAND;
THE AMERICAN LEGION COLMAR MANOR POST 131,
Intervenors – Appellees.

On Appeal from the United States District Court for the District of Maryland
Greenbelt Division, Deborah K. Chasanow, District Judge

**BRIEF OF AMICI CURIAE
STATE OF WEST VIRGINIA AND 24 OTHER STATES
SUPPORTING APPELLEES**

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INTRODUCTION AND IDENTITY OF *AMICI*¹

To remember the brave soldiers who have laid down their lives for their country, the people of this Nation have built no end of permanent monuments.² Often ornamented with iconic religious imagery, the purpose of these veterans memorials is to “honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people.” *Salazar v. Buono*, 559 U.S. 700, 721 (2010) (plurality op.). Each year, for example, thousands of Americans travel across the country to Arlington National Cemetery to pay their respects to the soldiers who died in World War I, visiting the white marble Argonne Cross and Canadian Cross of Sacrifice—two stark white crosses that tower over rows and rows of white headstones etched with crosses.³ Many veterans monuments elsewhere around the country echo this imagery—such as the veterans memorial laid out in the shape of an aerial cross on

¹ *Amici* States of West Virginia, Alabama, Arkansas, Arizona, Florida, Georgia, Idaho, Indiana, Hawaii, Kansas, Kentucky, Louisiana, Michigan, Montana, Nevada, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, and Wisconsin file this brief this brief under Rule 29(a) of the Federal Rules of Appellate Procedure. “[A] state may file an amicus-curiae brief without the consent of the parties or leave of court.” Fed. R. App. P. 29(a).

² Photographs of veterans memorials discussed in this brief are set forth in the addendum to this brief, *infra* p. 1a.

³ *See infra* pp. 16a, 18a.

the grounds of West Virginia's State Capitol,⁴ as well as the World War I memorial in Bladensburg, Maryland, which is at issue in this case.⁵

Amici have a significant interest in supporting their citizen-veterans and the memorials found on public lands, including in Arlington National Cemetery, Civil War battlefields, state capitols, and countless town squares. In the case below, the district court correctly concluded that Bladensburg's World War I memorial comports with the Establishment Clause because of the monument's "nature, context, and history" as a veterans memorial. A decision affirming the district court would preserve this historic war monument from the possibility of removal or alteration, as well as set an important precedent protecting countless other cherished veterans memorials—including those at Arlington National Cemetery, which is located in this Circuit.

⁴ *See infra* p. 13a.

⁵ *See infra* p. 21a.

SUMMARY OF ARGUMENT

Both in the Fourth Circuit and nationwide, veterans memorials historically have featured religious imagery of all kinds for the secular purpose of honoring and remembering the many soldiers who fought and died for our country. The inscription on the Tomb of the Unknown Soldier at Arlington National Cemetery, for example, reads, “Here Rests In Honored Glory An American Soldier Known But To God.” And a Civil War monument at the West Virginia State Capitol quotes Abraham Lincoln’s Gettysburg Address, “that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom.”

Throughout American history, crosses in particular have been the symbol at veterans memorials for soldiers who fell in battle. Since World War I, the cross, a universal symbol of death and an age-old military symbol of valor, has marked the graves of countless soldiers worldwide. In turn, the fields of crosses at these cemeteries inspired many freestanding veterans monuments in the shape of a white cross, such as the Argonne Cross and Canadian Cross of Sacrifice at Arlington National Cemetery, and the World War I memorial at Bladensburg that is the subject of this case.

This Court should affirm the district court’s conclusion that Bladensburg’s monument comports with the Establishment Clause given its nature, context, and

history as a World War I veterans memorial. The district court rightly held that the Establishment Clause allows veterans memorials, like Bladensburg's monument, to have religious elements, given that these memorials were built not to advance or promote religion but to pay tribute to those who laid down their lives for their country. *Salazar v. Buono*, 559 U.S. 700, 721 (2010) (plurality op.). Critically, a precedent from this Court recognizing this history and affirming the district court would not only preserve the memorial at Bladensburg from the risk of alteration or removal, but also ensure that many similar historic war memorials may continue to stand, undisturbed, as markers of honor and respect for those who served.

ARGUMENT

Throughout American history, veterans memorials have constitutionally used religious imagery for the civic purpose of honoring the brave men and women of the military who have laid down their lives for their country. As the district court correctly concluded, the Supreme Court has instructed that courts confronted with an Establishment Clause challenge should evaluate the use of religious imagery in a public monument in light of its “nature, context, and history.” *Am. Humanist Ass’n v. Maryland-Nat’l Capital Park & Planning Comm’n*, No. DKC 14–0550, ---F.Supp.3d---, 2015 WL 7711734 at *7 (D. Md. Nov. 30, 2015). Under this test, the veterans memorial at Bladensburg⁶ comports with the Establishment Clause, because the nature, history, and context of veterans memorials show that religious imagery of all kinds, including crosses, has historically been featured on veterans memorials for the secular, civic purpose of remembering soldiers lost in battle. 2015 WL 7711734 at *7–11.

⁶ See *infra* p. 21a.

I. Countless Historic Veterans Memorials Contain Religious Imagery For The Civic Purpose Of Honoring And Remembering The Many Soldiers Who Fought And Died For Their Country.

A. Throughout American history, veterans memorials have featured religious imagery of all kinds in honor of fallen soldiers.

The Fourth Circuit, home to many Civil War battlefields⁷ and located next to the nation's capital, contains within it forty veterans cemeteries⁸ as well as some of the Nation's most important veterans memorials—many of which use religious imagery to honor veterans.

Since at least the nineteenth century, veterans monuments have often featured religious allusions that evoke memories of American soldiers killed in war. In New York City, for example, the monument to soldiers killed in the Battle of Long Island during the Revolutionary War is etched with the words spoken by George Washington on the eve of battle—“My God, What Brave Fellows I Must This Day Lose!”⁹ In the same way, monuments built after the Civil War were often engraved with the closing words of Abraham Lincoln's Gettysburg Address—“that we here highly resolve that these dead shall not have died in

⁷ See generally Am. Battlefield Protection Program, *Civil War Battle Summaries by State*, <http://www.nps.gov/abpp/battles/bystate.htm> (reporting that 175 of the Nation's 382 Civil War battlefields are in the Fourth Circuit).

⁸ Maryland has eight veterans cemeteries, North Carolina seven, South Carolina four, Virginia eighteen, and West Virginia three. U.S. Dep't of Veterans Affairs (VA), Nat'l Ctr. for Veterans Analysis & Statistics, State Summaries, *available at* <http://www.va.gov/vetdata/stateSummaries.asp>.

⁹ New York City Dep't of Parks & Recreation, *Prospect Park, Maryland Monument*, <http://www.nycgovparks.org/parks/prospect-park/highlights/19641>.

vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.”¹⁰ Those words are found today everywhere from the Lincoln Memorial¹¹ to the battlefield at Gettysburg¹² to West Virginia’s State Capitol.¹³ So, too, after the Spanish-American War, the monuments at Arlington National Cemetery, for example, had similar religious allusions “To the glory of God and in grateful remembrance of the men and women of the Armed Forces who in this century gave their lives for our country that freedom might live,”¹⁴ and were topped with a Maltese cross.¹⁵

In the twentieth century, monuments to the soldiers of World War I also commonly featured religious references for the secular purpose of honoring and remembering the many soldiers who fought and died for our country. For

¹⁰ Abraham Lincoln Online, *The Gettysburg Address*, <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>.

¹¹ Nat’l Park Serv., *Lincoln Memorial Inscriptions*, <https://www.nps.gov/linc/learn/historyculture/Inscriptions.htm>; *infra* p.2a.

¹² Lincoln’s Gettysburg Address Memorial, <http://gettysburg.stonesentinels.com/other-monuments/lincolns-gettysburg-address-memorial/>.

¹³ West Virginia Civil War Memorial - Charleston, West Virginia, http://www.waymarking.com/waymarks/WM8FE1_West_Virginia_Civil_War_Memorial_Charleston_West_Virginia; *infra* p. 2a.

¹⁴ Arlington Nat’l Cemetery, *Spanish-American War Monument*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Spanish-American-War-Monument>.

¹⁵ Arlington Nat’l Cemetery, *Spanish-American War Nurses Monument*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Spanish-American-War-Nurses-Monument>; *infra* p. 3a.

example, the Tomb of the Unknown Soldier at Arlington National Cemetery—a white mausoleum in a marble plaza perpetually guarded by the U.S. Army—was inscribed, “Here Rests In Honored Glory An American Soldier Known But To God.”¹⁶ Likewise, in Huntington, West Virginia, the city’s white World War I Monument Arch—a reproduction of the Arc de Triomphe in Paris—was engraved, “Fortis et Fidelis,” that is, “Strong and Faithful.”¹⁷ The base of Indianapolis’s World War I obelisk—a 100-foot high shaft of smooth black granite—was similarly affixed with mammoth stone bas-relief pictures depicting Moses bearing the Decalogue and a woman and girl praying before a Celtic cross.¹⁸

In much the same way, after World War II, many veterans memorials had plaques containing a solemn invocation in honor of those who died. In Coal City, West Virginia, where one family received word of the death of a family member every five days during World War II, the veterans memorial reads, “By the grace of God some returned to a grateful nation”; “Let all who pass this way praise God for the valiant service they have freely given to our nation and to mankind.”¹⁹

Likewise, in Elkins, West Virginia, the county courthouse’s World War II

¹⁶ Arlington Nat’l Cemetery, *The Tomb of the Unknown Soldier*, <http://www.arlingtoncemetery.mil/Explore/Tomb-of-the-Unknown-Soldier>; *infra* p. 3a.

¹⁷ World War Monument Arch - Huntington WV, http://www.waymarking.com/waymarks/WM53PZ_World_War_Monument_Arch_Huntington_WV; *infra* p. 4a.

¹⁸ Indiana, *Veterans Memorial Plaza*, <http://www.in.gov/iwm/2330.htm>; Indiana, *Obelisk Fountain*, <http://www.in.gov/iwm/2359.htm>; *infra* p. 5a.

¹⁹ Views of the Raleigh County Veterans Memorial, <http://jeff560.tripod.com/veterans.html>.

memorial avows, “O God, we trust in thee: Let us not be ashamed in this solemn hour of human history. Increase our abiding faith in the deep and holy foundations which our forefathers laid. May we honor those who died in this war by building on the foundation of thy abiding peace.”²⁰

Frequently, these World War II memorials used symbols that have historical meaning beyond religion. This is the case, for example, with the large gray Star of David monument in Columbia, South Carolina dedicated to the liberators and victims of the concentration camps in the Holocaust.²¹ Designed by renowned sculptor Irwin Hyman and situated among six other large veterans monuments, this combined veterans and Holocaust memorial is engraved with prominent Hebrew script and the word “REMEMBER.”²²

The aesthetics of many modern veterans memorials have been no different. In Blooming Grove, Texas, for example, a memorial to soldiers who fought in Korea and Vietnam quotes the Book of Ecclesiastes, “Rejoice, O Young Men, in Thy Youth,”²³ and in Wentzville, Missouri, a red granite Vietnam memorial

²⁰ The Historical Marker Database, *Randolph County Veterans Memorial*, <http://www.hmdb.org/marker.asp?marker=33562>.

²¹ Columbia, South Carolina, *Memorial Park*, <http://www.columbiasouthcarolina.com/memorialpark.html>.

²² *Id.*; Discover South Carolina, *Memorial Park*, <http://discoversouthcarolina.com/products/823>; *infra* p. 5a.

²³ The USGenWeb Project, *Korean & Vietnam War Memorial Marker Photos*, http://www.rootsweb.ancestry.com/~txnavarr/markers/war_memorial_blooming_grove/Korea_Vietnam_Marker_Photos.htm.

repeats the words of Ruth 1:16, “Whither thou goest I will go.”²⁴ In Harpers Ferry, West Virginia, the veterans memorial dedicated in 1993 is engraved “May God Bless America.”²⁵ At Arlington, the Space Shuttle Challenger memorial dedicated in 1987 was carved with the sonnet *High Flight* by John Gillespie Magee, “I have slipped the surly bonds of earth . . . put out my hand, and touched the face of God.”²⁶

B. Throughout American history, veterans memorials have featured crosses as symbols of soldiers who fell in battle.

Of all the many religious images found in our nation’s veterans memorials, crosses in particular have historically been understood to be the symbol of fallen soldiers. In the military, a cross indicates both death and bravery: a cross is the mark of heroism, for example, on the Army’s Distinguished Service Cross,²⁷ the Navy Cross,²⁸ the Air Force Cross,²⁹ the Distinguished Flying Cross,³⁰ the Army’s

²⁴ Wentzville, Missouri, *Vietnam Veterans Memorial*, http://www.wentzvillemo.org/visitors/vietnam_war_memorial/index.php.

²⁵ Historical Marker Project, *Harpers Ferry Bolivar Veterans Memorial*, http://www.historicalmarkerproject.com/markers/HM1CC5_harpers-ferry-bolivar-veterans-memorial_Bolivar-WV.html.

²⁶ Arlington Nat’l Cemetery, *The Space Shuttle Challenger Memorial*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Space-Shuttle-Challenger-Memorial>; Arlington Nat’l Cemetery, *The Shuttle Challenger Memorial*, <http://arlingtoncemetery.net/challengr.htm>; Arlington Nat’l Cemetery, *High Flight*, <http://www.arlingtoncemetery.net/highflig.htm>; *infra* p. 7a.

²⁷ 10 U.S.C. § 3742.

²⁸ 10 U.S.C. § 6242.

²⁹ 10 U.S.C. § 8742.

³⁰ 10 U.S.C. § 3749.

Combat Medical Badge,³¹ and the Americal Division's insignia,³² as well as, abroad, on the British, Australian, and Canadian Victoria Cross,³³ the German Honor Cross,³⁴ and the French Croix de Guerre.³⁵

1. A cross has been the symbol of fallen soldiers in this country since at least the Civil War. Indeed, across the country, no fewer than 114 Civil War monuments feature a cross of some kind.³⁶ Among the trails of the Chickamauga Battlefield in Georgia, for example, can be found a 12-foot tapering white granite cross, dedicated to the memory of a messenger who fell while delivering a message

³¹ U.S. Army, *Combat Medical Badge*, <http://www.army.mil/symbols/CombatBadges/medical.html>.

³² The bronze memorial at Arlington for the U.S. Army's Americal Division is, for example, "Dedicated to those that served—WWII, Korea, Vietnam—Under the Southern Cross." Arlington Nat'l Cemetery, *Americal Division (United States Army) Memorial*, <http://arlingtoncemetery.net/americal.htm>.

³³ Veterans Affairs Canada, *Military Cross (MC)*, <http://www.veterans.gc.ca/eng/remembrance/medals-decorations/orders-decorations/mc>; Great War Primary Documents Archive, *Medals of Great Britain*, <http://www.gwpda.org/medals/britmedl/britain.html>.

³⁴ *First Military Medal for Bravery Since WWII: Germany Awards Military Cross of Courage*, Der Spiegel (July 6, 2009), <http://www.spiegel.de/international/germany/first-military-medal-for-bravery-since-wwii-germany-awards-military-cross-of-courage-a-634601.html>.

³⁵ Institute of Heraldry, *Military Campaign and Service Medals*, <http://www.tioh.hqda.pentagon.mil/Catalog/HeraldryList.aspx?CategoryId=9399&grp=12&menu=Decorations%20and%20Medals>.

³⁶ *Trunk v. City of San Diego*, 660 F.3d 1091, 1100 (9th Cir. 2011) (Bea, J., dissenting from denial of rehearing en banc).

between Union generals.³⁷ Gettysburg, to take another example, is home to the Irish Brigade Monument, a dark Celtic stone cross next to which the bronze likeness of an Irish wolfhound sleeps.³⁸

During World War I, the cross took on a special meaning for the American military when every battlefield in France seemed full of wooden crosses marking where soldiers had died in the trenches.³⁹ At its time, World War I was the most violent war that the world had ever known: In the five months of fighting that involved American troops, over 116,000 American soldiers died and almost 205,000 were wounded, a total equal to roughly the entire losses sustained over a decade by this country in both the Korean and Vietnam wars combined.⁴⁰ Due to the volume of casualties, and the ferocity of the artillery blasts, over half of the ten million men who died in World War I lacked a known grave, and nearly forty percent of slain American soldiers had to be buried overseas near their battles, App. 1892–93, which is why makeshift wooden crosses (or, for Jewish soldiers,

³⁷ Lieutenant George W. Landrum Monument - Chickamauga National Military Park, http://www.waymarking.com/waymarks/WMDRWM_Lieutenant_George_W_Landrum_Monument_Chickamauga_National_Military_Park; *infra* p. 8a.

³⁸ Nat'l Park Serv., *Park Scenes at Gettysburg*, <https://www.nps.gov/ner/photos/multimedia/photogallery.htm?id=C795B0CC-155D-451F-67B745EEEE69A02E>; *infra* p. 9a.

³⁹ App. 1883–84, 1893; *see infra* pp. 10a–12a.

⁴⁰ Am. Battle Monuments Comm'n, *Origins of the American Battle Monuments Commission*, https://www.abmc.gov/sites/default/files/interactive/interactive_files/WW1/index.html (follow “the Post-War Years” hyperlink; follow “the Origins of the American Battle Monuments Commission” hyperlink).

Stars of David), were placed by the head of so many fallen American soldiers.⁴¹

On the headstones of soldiers who could not be identified, crosses were inscribed “Here Rests in Honored Glory an American Soldier Known but to God.”⁴²

As Yale Professor of History Jay M. Winter noted in expert testimony submitted to the district court, “By 1918 [at the end of the war], soldiers of all armies were very familiar with this element of the landscape of war, one in which the wooden cross was everywhere and said simply this: here lies the grave of a fallen soldier.” App. 1899. Indeed, early in the war, John McCrae wrote the poem *In Flanders Fields* describing the already-legion fields of crosses surrounding the soldiers in the trenches, “In Flanders Fields the poppies blow, between the crosses row on row.” App. 1895–96.

This enduring image of World War I—“an endless sea of crosses”—still is brought to mind today by the permanent stone markers replacing the original wooden crosses at overseas cemeteries.⁴³ These pristine white marble crosses stand to this day at cemeteries near the battlefields of World War I, such as

⁴¹ App. 1896–97; *see infra* p. 14a; *see generally* American Battle Monuments Comm’n, <https://www.abmc.gov/about-us/history>.

⁴² Am. Battle Monuments Comm’n, *History*, <https://www.abmc.gov/about-us/history>.

⁴³ App. 1895–96; *see generally* Am. Battle Monuments Comm’n, <https://www.abmc.gov/about-us/history>.

Flanders Field, Aisne-Marne, St. Mihiel, Meuse-Argonne, and Lorraine.⁴⁴ More crosses were erected overseas later during World War II as well. At Normandy, for instance, the nearly ten thousand soldiers who died storming the beaches on D-Day each are buried under a cross, with each cross in a row, and each row forming the pathways of an aerial cross.⁴⁵

Since World War I, veterans cemeteries at home have also marked soldiers' graves with a cross, Star of David, or other religious symbol—usually etched on a rounded white stone slab.⁴⁶ This is the case, for example, at Arlington National Cemetery, the final resting place of more than 400,000 active duty service members, veterans and their families.⁴⁷ At Arlington, a cross marks the graves of many distinguished Americans, including President John F. Kennedy, Senator Robert F. Kennedy, General John J. Pershing, and Chief Justice Earl Warren.⁴⁸ In

⁴⁴ See Am. Battle Monuments Comm'n, *Cemeteries & Memorials*, https://www.abmc.gov/cemeteries-memorials#.VvxNvHqL1_1 (providing images of all overseas veterans cemeteries); *infra* p. 14a.

⁴⁵ Am. Battle Monuments Comm'n, *Commemorative Sites Booklet*, at 30, https://www.abmc.gov/cemeteries-memorials/europe/normandy-american-cemetery#.VvxOQnqL1_k; *infra* pp. 13a–14a.

⁴⁶ Arlington Nat'l Cemetery, *Available Emblems Of Belief For Placement On Government Headstones And Markers*, <http://www.arlingtoncemetery.mil/Funerals/Scheduling-a-Funeral/Headstones-and-Niche-Cover-Covers> (providing images of 57 diverse religious symbols as options for grave markers); *infra* pp. 31a–32a.

⁴⁷ Nat'l Park Serv., *Arlington National Cemetery*, http://www.nps.gov/nr/travel/national_cemeteries/virginia/arlington_national_cemetery.html.

⁴⁸ Arlington Nat'l Cemetery, *U.S. Supreme Court*, <http://www.arlingtoncemetery.mil/Explore/Notable-Graves/US-Supreme-Court>; Arlington Nat'l Cemetery,

fact, in 1968, Senator Robert F. Kennedy was interred at Arlington not in a grand monument, but under a plain, white stone cross.⁴⁹

2. The seas of crosses built during World War I also inspired the veterans monuments in honor of the dead of that war. For many bereaved families, there was no gravesite to visit, and so the survivors of war “throughout the world searched for ways to register both their shock at the carnage of the war they termed the Great War and their sense of indebtedness to those who had lain down their lives in the conflict.” App. 1883, 1893. Taking their lead from the seas of white crosses in veterans cemeteries, they built war monuments in the shape of “an adapted, modulated, secularized cross.” App. 1883–84.

Every major military cemetery in the Commonwealth of Nations thus was constructed with a Cross of Sacrifice designed by British architect Sir Reginald Blomfield.⁵⁰ The Cross of Sacrifice was a lone pale stone cross affixed with a bronze sword, mounted on an octagonal base, and designed especially to honor the

Presidents, <http://www.arlingtoncemetery.mil/Explore/Notable-Graves/US-Supreme-Court>; Arlington Nat'l Cemetery Website, *John Joseph “Black Jack” Pershing*, <http://www.arlingtoncemetery.net/johnjose.htm>; Arlington Nat'l Cemetery Website, *Earl Warren*, <http://www.arlingtoncemetery.net/ewarren.htm>.

⁴⁹ Arlington Nat'l Cemetery, *Robert F. Kennedy Gravesite*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Robert-F-Kennedy-Gravesite>; *infra* p. 15a.

⁵⁰ Commonwealth War Graves Comm'n, *Our Cemetery design and features*, <http://www.cwgc.org/about-us/what-we-do/architecture/our-cemetery-design-and-features.aspx>; George L. Mosse, *Fallen Soldiers* 83 (1991); *infra* p. 17a.

dead of World War I.⁵¹ As described by Rudyard Kipling, whose son died in the war and who served as a member of the Commonwealth War Graves Commission, it was “a stark Sword brooding on the bosom of the Cross.”⁵² The Ypres Reservoir Cemetery in Belgium, for example, features this Cross of Sacrifice near the battlefields where hundreds of thousands of soldiers died when German and the Allied armies clashed on the Western Front.⁵³

Taking their lead from the Crosses of Sacrifice dotting allied military cemeteries around the world after World War I, two stark white cross memorials were built at Arlington National Cemetery in honor of the American dead of the Great War: the 13-foot high plain white marble Argonne Cross, built by the American Women’s Legion in memory of the soldiers who died at Argonne,⁵⁴ and the 24-foot high white Canadian Cross of Sacrifice, donated by the Canadian government in memory of the American soldiers who had joined the Canadian army before America had entered the war.⁵⁵

⁵¹ *Id.*

⁵² *Id.*; George L. Mosse, *Fallen Soldiers* 83 (1991); *see also* Rudyard Kipling, *War Graves: Work of Imperial Commission: Mr. Kipling's Survey, republished as Graves of the Fallen* (1918); Rudyard Kipling, *My Boy Jack, in Sea Warfare* (1916).

⁵³ App. 1904; *see infra* p. 18a.

⁵⁴ Arlington Nat’l Cemetery, *Argonne Cross Memorial*, <http://arlingtoncemetery.net/argonne-cross.htm>; *infra* p. 16a.

⁵⁵ App. 1765–66; *see* Arlington Nat’l Cemetery, *Canadian Cross of Sacrifice (WW I/WW II/Korea)*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Canadian-Cross>; Arlington Nat’l Cemetery, *The Canadian Cross Of*

Many similar cross monuments were erected at the same time throughout the country in memory of the soldiers of World War I. In Brooklyn, New York, a 12-foot white granite Celtic cross was erected at Cypress Hill National Cemetery in remembrance of 25 French sailors who died while serving in American waters.⁵⁶ In New York City, the World War I chaplain-soldier Father Francis Patrick Duffy was honored in bronze effigy dressed in military garb, holding his bible, and standing before a 17-foot tall green granite Celtic cross.⁵⁷ In memory of Georgia's soldiers, the people of Augusta, Georgia built a white stone cross on a median between city streets.⁵⁸ Outside Philadelphia, a large white stone Celtic cross was erected "in loving memory of the men of Chestnut Hill and Mt. Airy who died in the World War, France, 1918."⁵⁹ The white Mojave Desert Cross near Clima,

Sacrifice At Arlington National Cemetery, <http://arlingtoncemetery.net/canadian-cross.htm>; *infra* p. 18a.

⁵⁶ U.S. Dep't of Veteran Affairs, *Cypress Hills National Cemetery*, <http://www.cem.va.gov/cems/nchp/cypresshills.asp>; Naval-History.Net, *French Navy, World War I*, <http://www.naval-history.net/WW1NavyFrenchNYDeaths.htm>; *infra* p. 19a.

⁵⁷ New York City Dep't of Parks & Recreation, *Father Duffy Square*, <http://www.nycgovparks.org/parks/father-duffy-square/monuments/416>; *infra* p. 19a.

⁵⁸ The Nat'l War Memorial Registry, *Troop K Georgia Cavalry War Memorial Front*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/georgia/troop-k-georgia-cavalry-war-memorial-front>; *infra* p. 22a.

⁵⁹ Philadelphia Pub. Art, *Chestnut Hill and Mt. Airy World War I Memorial*, http://www.philart.net/art/Chestnut_Hill_and_Mt_Airy_World_War_I_Memorial/515.html; The Nat'l War Memorial Registry, *Chestnut Hill and Mt. Airy World War I Memorial Dedication Stone*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/pennsylvania/chestnut-hill-and-mt-airy-world-war-memorial-dedication-stone>; *infra* p. 20a.

California was built to honor the ““Dead of All Wars.””⁶⁰ And in San Diego, the Mt. Soledad Veterans Memorial Cross honored all “veterans of the United States Armed Forces.”⁶¹

In Maryland, four white memorial crosses were built after World War I, including the cross at the veterans memorial in Bladensburg,⁶² each at a crossroads, “so that all who pass may be reminded of the patriotic and devoted service of our glorious dead.”⁶³ In Baltimore, for instance, a six-foot-tall stone cross near the Johns Hopkins Hospital was “Dedicated to the glory of God and in reverent memory of the men and women of this community who served their county in all wars.”⁶⁴ In 1921, an ornately carved Victory Cross was, likewise, built near the Episcopal Cathedral in Baltimore. App. 2675. In Towson, the citizens erected a granite wayside cross inscribed with the names of 204 fallen soldiers and the words, “To the sacred memory of the sons and daughters of Baltimore County who dying for their country in the world war gave proof-undying of patriotism supreme, this symbol of love victorious in death is dedicated by their fellow citizens.

⁶⁰ *Salazar v. Buono*, 559 U.S. 700, 707 (2010) (plurality op.).

⁶¹ Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3346 (2004).

⁶² *See infra* p. 21a.

⁶³ Maryland Historical Trust Inventory, Towson Wayside Cross, App. 2675 (Feb. 1997).

⁶⁴ Non-Secular Stone Cross Memorial - Baltimore, MD, http://www.waymarking.com/waymarks/WM4AC8_Non_Secular_Stone_Cross_Memorial_Baltimore_MD; *infra* p. 22a. Although this memorial is undated, it appears to date to this era.

Greater love than this hath no man.”⁶⁵ As a state Historical Trust survey noted, Towson’s monument “is a rare example of a European wayside cross war memorial . . . [with] high artistic value [that] embodies the distinctive characteristics of European war memorials.” App. 2660.

All in all, as Professor Winter explained below, “[in this unique post-war setting, the symbol of the cross took on an ecumenical meaning informed by the preoccupations of a generation registering the shock of American loss of life in the world war. A composite cross, one with multiple symbols attached to it, referred not to a particular faith or denomination, but to the sea of crosses on the other side of the ocean marking the graves of men who had died in the war.” App. 1895.

3. Since World War I, countless veterans monuments have continued to use crosses as the symbol of fallen soldiers. During the Vietnam War, the people of Coos Bay, Oregon raised a 5 1/2-foot tall white cross in honor of “the men who gave their lives,”⁶⁶ and, in La Mesa, California, the American Legion built a Vietnam War Memorial topped by a white cross.⁶⁷ At Chaplain’s Hill in Arlington National Cemetery, a monument dedicated in 1989 to slain Catholic chaplains of

⁶⁵ App. 2672; *infra* p. 20a.

⁶⁶ Lori Tobias, *Coos Bay Vietnam memorial stirs up strong feelings and a bombing over Christian symbolism*, The Oregonian (Aug. 31, 2013), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2013/08/coos_bay_vietnam_memorial_stir.html; *infra* p. 23a.

⁶⁷ Vietnam War Memorial, La Mesa, CA, http://www.waymarking.com/waymarks/WM8WQX_Vietnam_War_Memorial_La_Mesa_CA; *infra* p. 23a.

many wars bears a bronze crucifix and a plaque that says, “May God Grant Peace To Them And To The Nation They Served So Well.”⁶⁸ In Wisconsin, the American Legion has recently donated a plain wooden cross to the Town of Langdale cemetery in memory of the dead of all wars,⁶⁹ and, in West Virginia, the modern veterans memorial at the Charleston State Capitol is a two-story monument composed of four limestone monoliths laid out in an aerial cross.⁷⁰

In Waterbury, Connecticut, the Great War For Democracy Memorial is a close replica of the original, white wooden crosses that would have been found in clusters by the trenches of World War I. Modified over the years and added to in recent times, this memorial features three rough white wooden crosses, dedicated each to a local soldier who died in World War I and stuck roughly in the ground alongside Star of David plaques for Jewish soldiers⁷¹ A large central illustration

⁶⁸ Arlington Nat'l Cemetery, *Chaplains Hill & Monuments*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Chaplains-Hill>; Arlington Nat'l Cemetery, *The Catholic Chaplain's Monument at Arlington National Cemetery*, <http://arlingtoncemetery.net/catholic.htm>; *infra* p. 6a.

⁶⁹ The Nat'l War Memorial Registry, *American Legion Post 524 War Memorial Cross*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/wisconsin/american-legion-post-524-war-memorial-cross>; *infra* p. 24a.

⁷⁰ W. Va. Div. of Culture & History, *West Virginia Veterans Memorial*, <http://www.wvculture.org/history/wvets.html>; *see infra* p. 13a.

⁷¹ Historical Marker Project, *Great War For Democracy Memorial*, http://www.historicalmarkerproject.com/markers/HMO2O_great-war-for-democracy-memorial-Waterbury-CT.html; The Nat'l War Memorial Registry, *Great War For Democracy Memorial Main Panel*, <http://www.nationalwarmemorialregistry.org/memorials/great-war-for-democracy-memorial-main-panel/>; *infra* p. 26a.

depicts a soldier kneeling before a cross, and recites the words of the poem *In Flanders Field*, as well as the words of Ecclesiastes 44:14, a passage selected by Rudyard Kipling to appear on World War I stones of remembrance throughout Europe—“Their bodies are buried in peace; but their name liveth for evermore.”⁷²

Many towns have also set up fields of crosses as veterans memorials. In Mount Morris, New York, for example, a field of small white crosses is patterned after those found at Omaha Beach in Normandy.⁷³ In Highland, Kansas, a local cemetery has similar rows and rows of white crosses, each marked with a soldier’s name.⁷⁴ In Constantine, Michigan, the township cemetery features a field of crosses, each cross dedicated to a different war.⁷⁵ And in Sunbury, Ohio, a field of crosses was newly built to commemorate the soldiers of the War on Terrorism.⁷⁶

Many other cross monuments of unknown date can also be found across the country. In Mount Vernon, Illinois, on the grounds of the Jefferson County

⁷² George L. Mosse, *Fallen Soldiers* 83 (1991).

⁷³ The Nat’l War Memorial Registry, *Mount Morris Field Of Crosses*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/new-york/mount-morris-field-of-crosses>; *infra* p. 27a.

⁷⁴ The Nat’l War Memorial Registry, *Highland Cemetery Veterans Memorial Field Of Crosses*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/kansas/highland-cemetery-veterans-memorial-field-of-crosses>; *infra* p. 28a.

⁷⁵ The Nat’l War Memorial Registry, *Constantine Field Of Crosses War Memorial*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/michigan/constantine-field-of-crosses-war-memorial>; *infra* p. 27a.

⁷⁶ The Nat’l War Memorial Registry, *Ohio Fallen Heroes Field of Crosses Memorial*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/ohio/ohio-fallen-heroes-field-of-crosses-memorial>; *infra* p. 28a.

courthouse, a large dark granite pillar etched with a large white cross stands in tribute to the veterans of eight wars.⁷⁷ At Prescott National Cemetery in Arizona, the Unknown Soldiers Monument has a centered cross at its peak.⁷⁸ And in Aurora, Missouri, the Maple Park Cemetery has a short white stone cross, “for those who paid the ultimate sacrifice.”⁷⁹

4. Bronze battle cross memorials, another symbol from World War I, are also commonly found in veterans memorials across the country, and indeed, are increasingly built today in memory of the veterans of the War on Terrorism. Dating from World War I, a battle cross is another impromptu symbol from the battlefield, deriving from how soldiers marked where a fellow soldier died in battle—nothing more than a pair of boots propping up a rifle and a helmet in the shape of a cross.⁸⁰ This symbol can be found, for example, at the National D-Day Memorial in Bedford, Virginia (the community suffering the highest D-Day losses

⁷⁷ Jefferson County Veterans Memorial ~ Mount Vernon, IL, http://www.waymarking.com/waymarks/WM625Y_Jefferson_County_Veterans_Memorial_Mount_Vernon_IL; *infra* p. 25a.

⁷⁸ U.S. Dep’t of Veteran Affairs, *Prescott National Cemetery*, <http://www.cem.va.gov/cems/nchp/prescott.asp>; *American Legion Prescott, Honor Guard*, http://www.americanlegionazprescott.org/?page_id=109; *infra* p. 24a.

⁷⁹ The Nat’l War Memorial Registry, *Maple Park Cemetery War Memorial Cross*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/missouri/maple-park-cemetery-war-memorial-cross>; *infra* p. 25a.

⁸⁰ Lewisville Photos, <http://gallery.debphillips.com/g/battle-cross-bricks-11-2008>.

per capita nationwide),⁸¹ and at many other veterans memorials across the country, including those in Ansted, West Virginia⁸² and Lewisville, North Carolina—at the latter, alongside a plaque that reads “God Bless You All.”⁸³ Often, sculptures of soldiers are shown kneeling before the battle cross, such as at veterans memorials in Del City, Oklahoma or Priceville, Alabama.⁸⁴ Battle crosses can be found in more than 50 veterans memorials nationwide—and counting.⁸⁵

II. The District Court Correctly Concluded That Bladensburg’s Veterans Memorial Need Not Be Removed Or Altered.

The district court correctly concluded that the veterans memorial found in Bladensburg, Maryland comports with the Establishment Clause because of its “nature, context, and history” as a World War I veterans memorial. *Am. Humanist Ass’n*, 2015 WL 7711734 at *7. As the foregoing shows, veterans memorials like

⁸¹ Nat’l D-Day Memorial, <https://www.dday.org/>; Nat’l D-Day Memorial, <https://www.dday.org/introduction.html>; *infra* p. 29a.

⁸² The Nat’l War Memorial Registry, *New Haven Veterans’ Memorial Battlefield Cross*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/west-virginia/new-haven-veterans-memorial-battlefield-cross>; *infra* p. 29a.

⁸³ *See supra*, n. 84.

⁸⁴ Fallen Soldier Battle Cross - Del City, OK, http://www.waymarking.com/waymarks/WMBTCN_Fallen_Soldier_Battle_Cross_Del_City_OK; Town of Priceville, *Veterans Memorial*, <http://townofpriceville.com/about-priceville/veterans-memorial/>; *infra* p. 30a.

⁸⁵ *See* The Nat’l War Memorial Registry, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search.html> (search “battlefield crosses” in “type of memorial”).

this routinely feature religious imagery in memory of the soldiers who died in World War I, not as an attempt to advance or promote religion.

A. Bladensburg’s veterans memorial symbolizes the soldiers who died in World War I—an appropriate image in historic context.

1. For nearly a century, a veterans memorial featuring a 40-foot white cross has stood on a median near a busy highway in Bladensburg, Maryland.⁸⁶ At the cross’s center is posted the American Legion’s insignia. App. 1855–60. At its base is written the military virtues: valor, endurance, courage, and devotion.⁸⁷ And on its West face, a plaque names the forty-nine men from Prince George’s County who died “in the Great War for the liberty of the world.”⁸⁸

Like many monuments built worldwide at the time, this white cross was inspired by the fields of white crosses in Europe left after World War I. App. 1883–1915. As one local mother helping to raise funds for the memorial said in 1920, “The chief reason I feel so deeply on this matter, my son M.F. Redman, lost his life in France and because of that I feel that our memorial cross is, in a way, his gravesite.” *Id.* at 1895, 2300.

The local American Legion post built the veterans memorial in 1925 on a median along a then-new veterans memorial highway stretching from Washington,

⁸⁶ *Am. Humanist Ass’n*, 2015 WL 7711734 at *1–3; *infra* p. 21a.

⁸⁷ *Id.* at *7.

⁸⁸ *Id.* at *1.

D.C. to Annapolis.⁸⁹ According to the American Legion, this land was originally private, and the memorial was completed with private funds.⁹⁰ The memorial was taken for public ownership and maintenance only later when “increased traffic on the roads surrounding the Monument” made it necessary.⁹¹ Several other veterans monuments have since been added nearby.⁹² Like the World War I crosses at Arlington National Cemetery, Bladensburg’s veterans memorial uses religious imagery to “honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people.” *Salazar v. Buono*, 559 U.S. 700, 721 (2010) (plurality opinion).

2. Examining the monument’s “nature, context, and history,” the district court in this case found that the monument did not violate the Establishment Clause under either the Supreme Court’s decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), or *Van Orden v. Perry*, 545 U.S. 677 (2005). 2015 WL 7711734 at *7.

Under *Lemon*’s three-part test, government conduct generally satisfies the Establishment Clause if: (1) it has a secular purpose; (2) its primary effect neither advances nor inhibits religion; and (3) it avoids excessive entanglement with religion. *Lemon*, 403 U.S. at 612–13. Applying this test, the Supreme Court has inquired whether the “reasonable observer” would view the challenged conduct as

⁸⁹ *Id.* at *1–2.

⁹⁰ *Id.* at *1–3.

⁹¹ *Id.*

⁹² *Id.* at *3.

an “endorsement” of religion. *Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 620 (1989). Justices have warned, though, that the “goal of avoiding governmental endorsement does not require eradication of all religious symbols in the public realm.” *Buono*, 559 U.S. at 718 (plurality opinion).

In *Van Orden*, a plurality of the Court held that “the *Lemon* test “is not useful in dealing with [a] passive monument,” *Van Orden*, 545 U.S. at 686. In a controlling concurrence, Justice Breyer explained that there is “no single mechanical formula that can accurately draw the constitutional line,” *Van Orden*, 545 U.S. at 699 (Breyer, J., concurring). He thus analyzed an historic permanent monument for its constitutionality through “the exercise of legal judgment”—a “fact-intensive” assessment, that takes into account the monument’s “context,” history, and the Establishment Clause’s purposes. *Van Orden*, 545 U.S. at 686, 699–700 (Breyer, J., concurring); *see* 2015 WL 7711734, at *6. This approach recognizes that, at bottom, “sometimes a page of history is worth a volume of logic.” *Myers v. Loudoun Cnty. Pub. Sch.*, 418 F.3d 395, 402 (4th Cir. 2005) (quoting *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921)).

Van Orden controls this case, although, as the district court correctly concluded, the veterans memorial in Bladensburg “satisfies both the *Lemon* test and the ‘legal judgment’ test from *Van Orden*.” 2015 WL 7711734, at *11.

Whatever close questions this Court may be called upon to confront in a future Establishment Clause case, none is presented here. In its historic context, Bladensburg's World War I memorial is not a violation of the Establishment Clause but a solemn, civic tribute to soldiers who fell in World War I.

First, the district court correctly found that the sole, historical purpose of Bladensburg's memorial is secular—to maintain an “historically significant war memorial.” *Am. Humanist Ass’n*, 2015 WL 7711734, at *7 (citing, *inter alia*, *Trunk v. City of San Diego*, 629 F.3d 1099, 1108 (9th Cir. 2011)). Although a cross is “certainly a Christian symbol,” *Buono*, 559 U.S. at 715 (plurality opinion), Supreme Court justices have recognized that crosses are frequently used by the military in a way that “need not be taken as a statement of governmental support for sectarian beliefs,” *id.* at 718. Here, the district court correctly recognized that, after World War I, “the construction of a cross” was often “motivated by ‘the sea of crosses’ marking graves of American servicemen who died overseas,” a secular purpose of commemoration that was borne out here by “overwhelming evidence in the record.” *Am. Humanist Ass’n*, 2015 WL 7711734, at *7. Simply put, “those who erected the cross intended simply to honor our Nation’s fallen soldiers,” not to promote a Christian message. *Id.* (quoting *Buono*, 559 U.S. at 715 (plurality opinion)); *see* App. 1883–84.

Second, the district court rightly recognized that the primary effect of Bladensburg’s memorial is not to advance or endorse religion but to convey a civic, secular message of honor and grief for fallen soldiers. App. 1895. As the district court noted: Bladensburg’s memorial bears “secular elements on its face (the plaque; the American Legion Seal; the words ‘valor,’ ‘endurance,’ ‘courage,’ ‘devotion’)”; it “has functioned expressly and overtly as a war memorial for its entire history”; and it “sits amidst other secular memorials in Veterans Memorial Park” on a busy highway median. *Am. Humanist Ass’n*, 2015 WL 7711734, at *9. “Much like the Ten Commandments display in *Van Orden*,” the court concluded, “the location of the Monument ‘does not readily lend itself to meditation or any other religious activity.’” *Id.* at *11 (quoting *Van Orden*, 545 U.S. at 702 (Breyer, J., concurring)). The memorial was, moreover, originally paid for with primarily private funds and apparently set on private property. *Id.* at *1–3, 11. It has also been unchallenged for nearly a century, during which time it has been “used almost exclusively as a site to commemorate veterans on secular patriotic holidays.” *Id.* at *11.

The district court thus correctly found that in light of the history of veterans memorials after World War I—a “history and context, of which a reasonable observer would be aware”—Bladensburg’s memorial does not endorse religion. *Id.* at *9. This memorial “explicitly memorialize[d] forty-nine servicemen who

died in Europe during World War I,” at a time when the ““cross developed into a central symbol of the American overseas cemetery.”” *Am. Humanist Ass’n*, 2015 WL 7711734, at *9 (citing ECF Nos. 83–85, at 16–17; 83–21); *see* App. 1883–84. The cross thus ““evokes far more than religion. It evokes thousands of small crosses in foreign fields marking the graves of Americans who fell in battles, battles whose tragedies are compounded if the fallen are forgotten.”” *Id.* at *9 (quoting *Buono*, 559 U.S. at 721 (plurality opinion)).

Third, the district court correctly concluded that the funds paid by the government to maintain the memorial do not excessively entangle government with religion, “because the Monument itself is not a governmental endorsement of religion.” *Am. Humanist Ass’n*, 2015 WL 7711734, at *10. The government does not take part in any religious practice or worship, moreover, and any government maintenance is solely “for traffic safety and commemorative purposes.” *Id.*

B. If adopted, Appellant’s contrary position would imperil many historic veterans memorials featuring religious imagery.

Any decision of this Court requiring the alteration or removal of Bladensburg’s historic World War I veterans memorial would, furthermore, be a tragedy of historic and civic dimensions. Soldiers from the Fourth Circuit have served in all of America’s great wars,⁹³ and the Fourth Circuit is home today to

⁹³ West Virginia, for instance, supplied 40,000 to 46,000 soldiers for the Civil War, 58,053 soldiers for the first World War, 233,985 soldiers for the second, 112,000

approximately 2,579,000 of the Nation's 22 million veterans, many of which are disabled from their time serving in the military.⁹⁴ Were this memorial removed, they and their families would understandably question our country's continuing gratitude and respect for their military service.

Worse still, if Appellant's position were adopted, mischief could result far beyond the facts of this case. A precedent finding Bladensburg's veterans memorial unconstitutional would place at risk countless other war memorials featuring religious imagery, and encourage new "disputes concerning the removal of longstanding" monuments, which in turn could "thereby create the very kind of religiously based divisiveness that the Establishment Clause seeks to avoid." *Van Orden*, 545 U.S. at 704 (Breyer, J., concurring). Those memorials include the white World War I crosses and other monuments found at Arlington National Cemetery, located in this very Circuit.

soldiers for Korea, 36,578 soldiers for Vietnam, and 12,000 soldiers for the Gulf War—not to mention thousands more who served or are presently serving in Afghanistan and Iraq. W. Va. Div. of Culture & History, *How Many West Virginians Served?*, <http://www.wvculture.org/history/wvvets.html>.

⁹⁴ By State, Maryland is home to about 438,000 veterans; North Carolina, 775,000; South Carolina, 418,000; Virginia, 781,000; and West Virginia, 167,000. Of these veterans, 9,106,480 are enrolled in the health care system of the federal Department of Veterans' Affairs (VA), and nearly 3,949,066 receive federal veterans' disability compensation. These figures date from September 30, 2014, the most recent year for which data is available. U.S. Dep't of Veterans Affairs (VA), Nat'l Ctr. for Veterans Analysis & Statistics, *State Summaries*, available at <http://www.va.gov/vetdata/stateSummaries.asp>.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

I certify that on April 11, 2016, the foregoing document was served on the counsel of record for all parties through the CM/ECF system. A paper copy of this brief will be sent to the Clerk of Court via Federal Express.

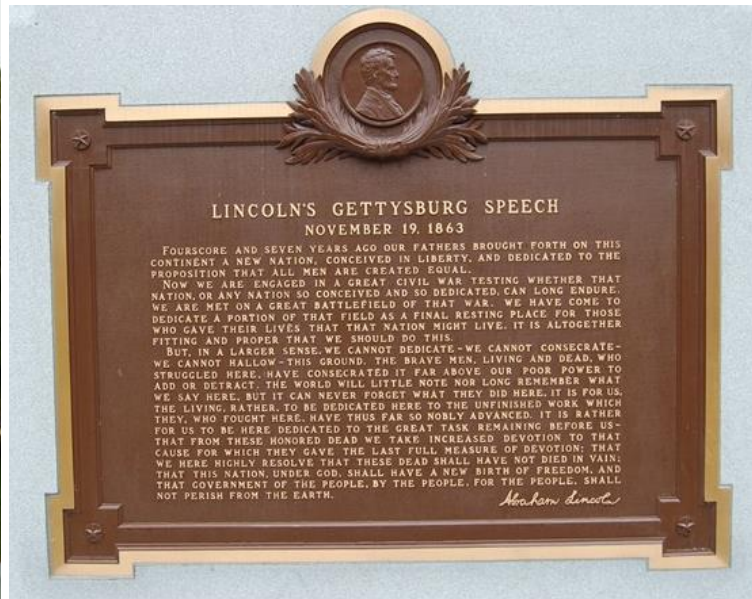
/s/ Elbert Lin
Elbert Lin

April 11, 2016
Date

ADDENDUM: IMAGES OF VETERANS MEMORIALS



Lincoln's Gettysburg Address Memorial at Gettysburg, Pennsylvania.¹



Civil War Memorial at the State Capitol in Charleston, West Virginia.²

¹ Lincoln's Gettysburg Address Memorial, <http://gettysburg.stonesentinels.com/other-monuments/lincolns-gettysburg-address-memorial/>.

² West Virginia Civil War Memorial - Charleston, West Virginia, http://www.waymarking.com/waymarks/WM8FE1_West_Virginia_Civil_War_Memorial_Charleston_West_Virginia.



The Spanish-American War Nurses Monument at Arlington National Cemetery, Virginia.³



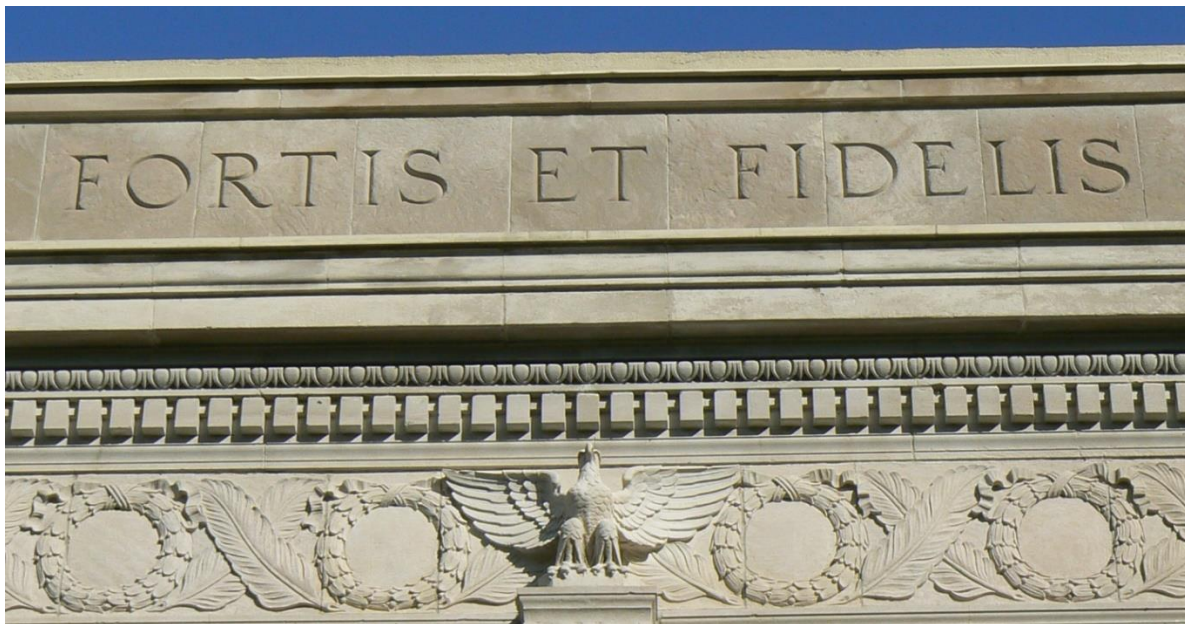
The Tomb of the Unknown Soldier at Arlington National Cemetery.⁴

³ Arlington Nat'l Cemetery, *Spanish-American War Nurses Monument*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Spanish-American-War-Nurses-Monument>.

⁴ Arlington Nat'l Cemetery, *The Tomb of the Unknown Soldier*, <http://www.arlingtoncemetery.mil/Explore/Tomb-of-the-Unknown-Soldier>.



World War I Monument Arch at Huntington, West Virginia.⁵



Inscription on the World War I Arch at Huntington, West Virginia.⁶

⁵ World War Monument Arch - Huntington WV, http://www.waymarking.com/waymarks/WM53PZ_World_War_Monument_Arch_Huntington_WV.

⁶ *Id.*



World War I Obelisk in Indianapolis, Indiana.⁷



Combined Veterans and Holocaust Memorial in Columbia, South Carolina.⁸

⁷ Obelisk Fountain, <http://www.in.gov/iwm/2359.htm>.

⁸ Columbia, South Carolina, *Memorial Park*, <http://www.columbiasouthcarolina.com/memorialpark.html>.



Chaplains Hill Monuments at Arlington National Cemetery.⁹



The Catholic Chaplain’s Monument at Arlington National Cemetery.¹⁰

⁹ Arlington Nat’l Cemetery, *Chaplains Hill & Monuments*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Chaplains-Hill>.

¹⁰ Arlington Nat’l Cemetery, *The Catholic Chaplain’s Monument at Arlington National Cemetery*, <http://arlingtoncemetery.net/catholic.htm>.



The Shuttle Challenger Memorial at Arlington National Cemetery.¹¹

¹¹ Arlington Nat'l Cemetery, *The Shuttle Challenger Memorial*, <http://arlingtoncemetery.net/challengr.htm>.



Lieutenant George W. Landrum Monument in Chickamauga, Georgia.¹²

¹² Lieutenant George W. Landrum Monument - Chickamauga National Military Park, [http:// www.waymarking.com/waymarks/WMDRWM_Lieutenant_George_W_Landrum_Monument_Chickamauga_National_Military_Park](http://www.waymarking.com/waymarks/WMDRWM_Lieutenant_George_W_Landrum_Monument_Chickamauga_National_Military_Park).



**Celtic Cross with Sleeping Wolfhound,
Irish Brigade Monument, Gettysburg, Pennsylvania.¹³**

¹³ Nat'l Park Serv., *Park Scenes at Gettysburg*, <https://www.nps.gov/ner/photos/multimedia/photogallery.htm?id=C795B0CC-155D-451F-67B745EEEE69A02E>.



Provisional World War I cemetery featuring wooden crosses.¹⁴



Original wooden crosses at Flanders Field American cemetery.¹⁵

¹⁴ App. 1897.

¹⁵ *Id.* at 1898.



Provisional cemetery in Chalons-sur-Marne, the first American graves in France with wooden crosses.¹⁶



Women tending the graves at the large cemetery at Etaples, France.¹⁷

¹⁶ *Id.*

¹⁷ *Id.* at 1899.



Suresnes American Cemetery, 1919.¹⁸



Coast Guardsmen salute the memory of a fellow Coast Guardsman, 1945.¹⁹

¹⁸ American Battle Monuments Commission, American Cemetery and Memorial Commemorative Sites Booklet, at 7, https://www.abmc.gov/cemeteries-memorials/europe/normandy-american-cemetery#.VvxOQnqL1_k.

¹⁹ *Id.* at 21.



Aerial View of the Cemetery, the Chapel and the Memorial

Aerial view of Normandy American Cemetery, France.²⁰



**Veterans Memorial laid out in the shape of an aerial cross
at the State Capitol in Charleston, West Virginia.²¹**

²⁰ American Battle Monuments Commission, *Normandy American Cemetery and Memorial*, at 2, www.dday0606.org/abmdoc-booklet-orig-enhanced.pdf.

²¹ W. Va. Division of Culture & History, *West Virginia Veterans Memorial*, <http://www.wvculture.org/history/wvets.html>.



Headstones at Normandy American Cemetery.²²



**Headstones and Memorial Cross
at St. Mihiel American Cemetery in France.²³**

²² American Battle Monuments Commission, https://www.abmc.gov/cemeteries-memorials/europe/normandy-american-cemetery#.Vv2adnqL1_1

²³ American Battle Monuments Commission, https://www.abmc.gov/cemeteries-memorials/europe/st-mihiel-american-cemetery#.Vv2aBHqL1_k



Robert F. Kennedy Gravesite at Arlington National Cemetery.²⁴

²⁴ Arlington Nat'l Cemetery, *Robert F. Kennedy Gravesite*, <http://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Robert-F-Kennedy-Gravesite>. Photograph by Michael Herrick.



The Argonne Cross at Arlington National Cemetery.²⁵



Inscription on the Argonne Cross at Arlington National Cemetery.²⁶

²⁵ Arlington Nat'l Cemetery, *Argonne Cross Memorial*, <http://arlingtoncemetery.net/argonne-cross.htm>.



The Commonwealth War Graves Commission's Cross of Sacrifice.²⁷



The Commonwealth War Graves Commission's Cross of Sacrifice.²⁸

²⁶ *Id.*

²⁷ Rudyard Kipling, *Graves of the Fallen*, Cover Page, https://en.wikipedia.org/wiki/Commonwealth_War_Graves_Commission#/media/File:The_Graves_of_the_Fallen_-_cover_page.jpg.

²⁸ Commonwealth War Graves Commission, *Our Cemetery design and features*, <http://www.cwgc.org/about-us/what-we-do/architecture/our-cemetery-design-and-features.aspx>.



The Cross of Sacrifice at the Ypres Reservoir Cemetery in Belgium.²⁹



The Canadian Cross of Sacrifice At Arlington National Cemetery³⁰

²⁹ App. 1904.

³⁰ Arlington Nat'l Cemetery, *The Canadian Cross Of Sacrifice At Arlington National Cemetery*, <http://arlingtoncemetery.net/canadian-cross.htm>.



The French Cross at Cypress Hill National Cemetery, New York.³¹



The Father Duffy Cross in New York City, New York.³²

³¹ French Navy, *World War I*, <http://www.naval-history.net/WW1NavyFrenchNYDeaths.htm>.

³² New York City Dep't of Parks & Recreation, *Father Duffy Square*, <http://www.nycgovparks.org/parks/father-duffy-square/monuments/416>.



World War I Memorial in Chestnut Hill and Mt. Airy, Pennsylvania.³³



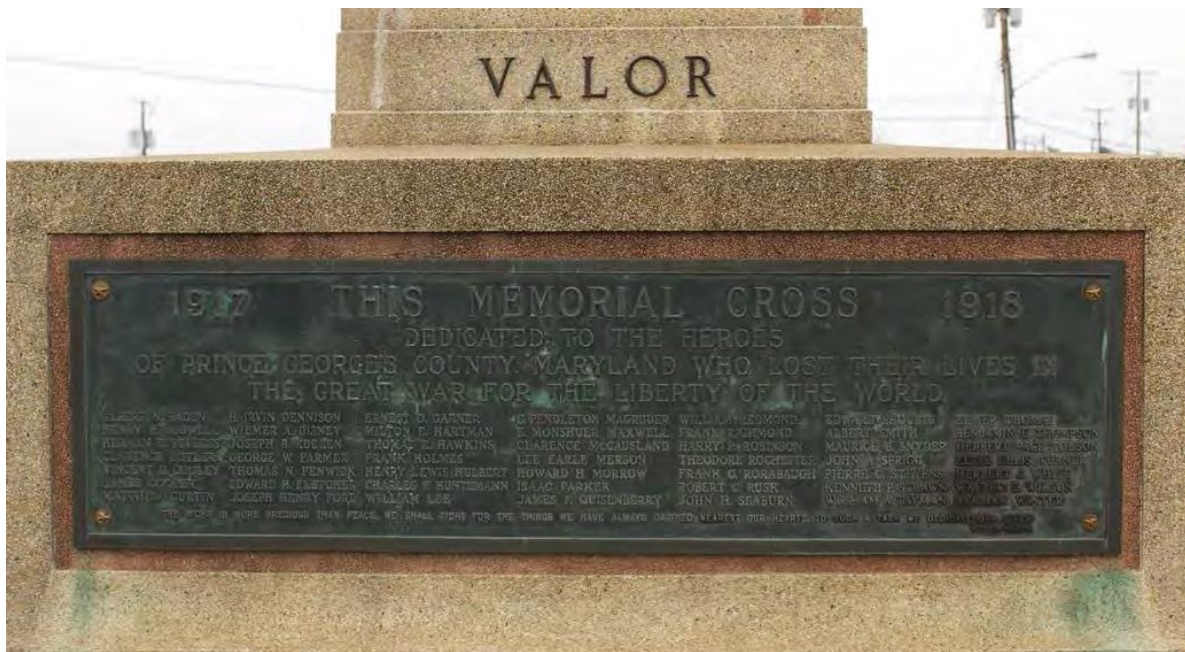
Wayside Cross in Towson, Maryland.³⁴

³³ Chestnut Hill & Mt. Airy World War I Memorial, http://www.philart.net/art/Chestnut_Hill_and_Mt_Airy_World_War_I_Memorial/515.html.

³⁴ Maryland Historical Trust Inventory, Towson Wayside Cross, App. 2681.



World War I Memorial Cross at Bladensburg, Maryland.³⁵



Inscription on World War I Memorial Cross at Bladensburg, Maryland.³⁶

³⁵ App. 1855.

³⁶ *Id.* at 1857.



Cross Memorial near Johns Hopkins Hospital, Baltimore, Maryland.³⁷



Troop K Georgia Cavalry War Memorial in Augusta, Georgia.³⁸

³⁷ Non-Secular Stone Cross Memorial - Baltimore, MD, http://www.waymarking.com/waymarks/WM4AC8_Non_Secular_Stone_Cross_Memorial_Baltimore_MD.

³⁸ *Troop K Georgia Cavalry War Memorial Front*, <http://www.nationalwar-memorialregistry.com/joomla/war-memorial-registry-search/georgia/troop-k-georgia-cavalry-war-memorial-front>. Photograph by Mike Stroud.



Vietnam Memorial in Coos Bay, Oregon.³⁹



Vietnam War Memorial in La Mesa, California.⁴⁰

³⁹ Lori Tobias, *Coos Bay Vietnam memorial stirs up strong feelings and a bombing over Christian symbolism*, The Oregonian (Aug. 31, 2013) http://www.oregonlive.com/pacific-northwest-news/index.ssf/2013/08/coos_bay_vietnam_memorial_stir.html.

⁴⁰ Vietnam War Memorial, La Mesa, CA, http://www.waymarking.com/waymarks/WM8WQX_Vietnam_War_Memorial_La_Mesa_CA.



American Legion Post 524 War Memorial Cross in Langdale, Wisconsin.⁴¹



Unknown Soldiers Monument at Prescott National Cemetery, Arizona.⁴²

⁴¹ Nat'l War Memorial Registry, *American Legion Post 524 War Memorial Cross*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/wisconsin/american-legion-post-524-war-memorial-cross>. Photograph by Melinda Roberts.

⁴² American Legion Prescott, *Honor Guard*, http://www.americanlegionazprescott.org/?page_id=109.



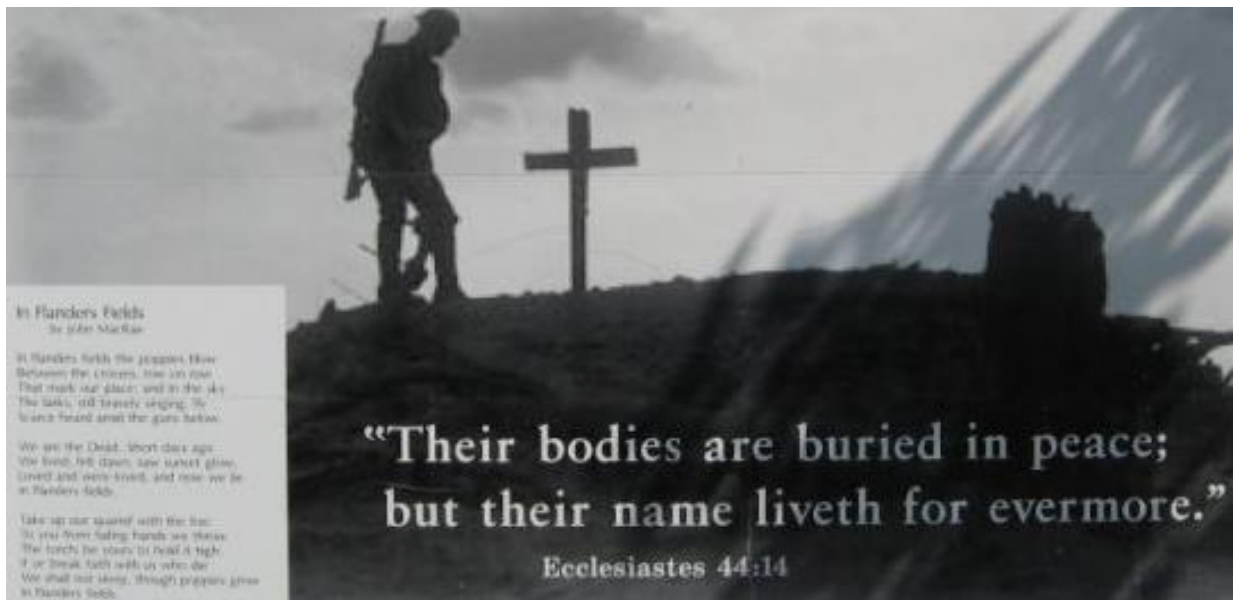
Maple Park Cemetery War Memorial Cross in Aurora, Missouri.⁴³



Jefferson County Veterans Memorial in Mount Vernon, Illinois.⁴⁴

⁴³ Nat'l War Memorial Registry, *Maple Park Cemetery War Memorial Cross*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/missouri/maple-park-cemetery-war-memorial-cross>. Photograph by Mary Thurman.

⁴⁴ Jefferson County Veterans Memorial ~ Mount Vernon, IL, http://www.waymarking.com/waymarks/WM625Y_Jefferson_County_Veterans_Memorial_Mount_Vernon_IL.



Great War For Democracy Memorial at Waterbury, Connecticut.⁴⁵

⁴⁵ Nat'l War Memorial Registry, *Great War For Democracy Memorial*, <http://www.nationalwarmemorialregistry.org/memorials/great-war-for-democracy-memorial/> and <http://www.nationalwarmemorialregistry.org/memorials/great-war-for-democracy-memorial-main-panel/>. Photograph by Michael Herrick.



Field of Crosses in Mount Morris, New York.⁴⁶



Field of Crosses War Memorial in Constantine, Michigan⁴⁷

⁴⁶ Nat'l War Memorial Registry, *Mount Morris Field Of Crosses*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/new-york/mount-morris-field-of-crosses>. Photograph by Jimmy Bruno.

⁴⁷ Nat'l War Memorial Registry, *Constantine Field Of Crosses War Memorial*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/michigan/constantine-field-of-crosses-war-memorial>. Photograph by Duane Hall.



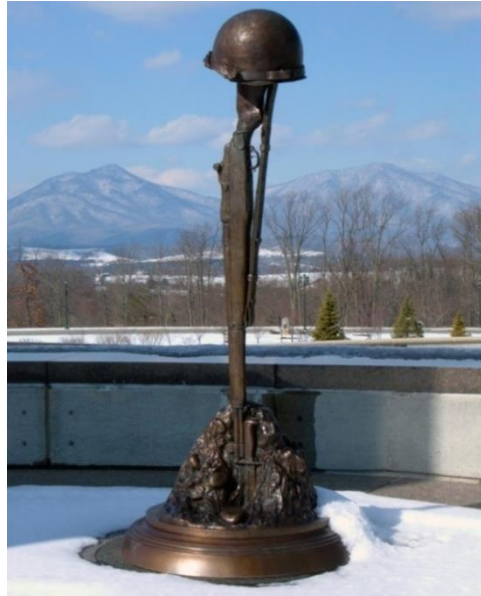
Veterans Memorial Field of Crosses in Highland, Kansas.⁴⁸



Ohio Fallen Heroes Field of Crosses Memorial in Sunbury, Ohio.⁴⁹

⁴⁸ Nat'l War Memorial Registry, *Highland Cemetery Veterans Memorial Field Of Crosses*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry-search/kansas/highland-cemetery-veterans-memorial-field-of-crosses>. Photograph by William Fischer Jr.

⁴⁹ Nat'l War Memorial Registry, *Ohio Fallen Heroes Field of Crosses Memorial*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial-registry->



Battle Cross at the National D-Day Memorial in Bedford, Virginia.⁵⁰



New Haven Veterans' Memorial Battlefield Cross in Ansted, West Virginia.⁵¹

search/ohio/ohio-fallen-heroes-field-of-crosses-memorial. Photograph by William Fischer Jr.

⁵⁰ Nat'l D-Day Memorial, <https://www.dday.org/introduction.html>.

⁵¹ Nat'l War Memorial Registry, *New Haven Veterans' Memorial Battlefield Cross*, <http://www.nationalwarmemorialregistry.com/joomla/war-memorial->



Fallen Soldier Battle Cross in Del City, Oklahoma.⁵²



Battle Cross at the Veterans Memorial in Priceville, Alabama.⁵³

registry-search/west-virginia/new-haven-veterans-memorial-battlefield-cross.

Photograph by Bernard Fisher.

⁵² Fallen Soldier Battle Cross - Del City, OK, http://www.waymarking.com/waymarks/WMBTCN_Fallen_Soldier_Battle_Cross_Del_City_OK.

⁵³ Town of Priceville, *Veterans Memorial*, <http://townofpriceville.com/about-priceville/veterans-memorial/>.

AVAILABLE EMBLEMS OF BELIEF FOR PLACEMENT ON GOVERNMENT HEADSTONES AND MARKERS



(1) LATIN (CHRISTIAN) CROSS



(2) BUDDHIST



(3) JUDAISM (Star of David)



(4) PRESBYTERIAN CROSS



(5) RUSSIAN ORTHODOX CROSS



(6) LUTHERAN CROSS



(7) EPISCOPAL CROSS



(8) UNITARIAN (Flaming Chalice)



(9) UNITED METHODIST



(10) AARONIC ORDER CHURCH



(11) MORMON (Angel Moroni)



(12) NATIVE AMERICAN CHURCH OF NORTH AMERICA



(13) SERBIAN ORTHODOX



(14) GREEK CROSS



(15) BAHAI (9-Pointed Star)



(16) ATHEIST



(17) MUSLIM (Crescent and Star)



(18) HINDU



(19) KONKO-KYO FAITH



(20) COMMUNITY OF CHRIST



(21) SUFISM REORIENTED



(22) TENRIKYO CHURCH



(23) SEICHO-NO-IE



(24) THE CHURCH OF WORLD MESSIANITY



(25) UNITED CHURCH OF RELIGIOUS SCIENCE



(26) CHRISTIAN REFORMED CHURCH



(27) UNITED MORAVIAN CHURCH



(28) ECKANKAR



(29) CHRISTIAN CHURCH



(30) CHRISTIAN & MISSIONARY ALLIANCE



(31) UNITED CHURCH OF CHRIST



(32) HUMANIST EMBLEM OF SPIRIT



(33) PRESBYTERIAN CHURCH (USA)



(34) IZUMO TAISHAKYO MISSION OF HAWAII



(35) SOKA GAKKAI INTERNATIONAL (USA)



(36) SIKH (KHANDA)



(37) WICCA (Pentacle)



(38) LUTHERAN CHURCH MISSOURI SYNOD



(39) NEW APOSTOLIC



(40) SEVENTH DAY ADVENTIST CHURCH



(41) CELTIC CROSS



(42) ARMENIAN CROSS



(43) FAROHAR



(44) MESSIANIC JEWISH

AVAILABLE EMBLEMS OF BELIEF (CONTINUED)



(45) KOHEN HANDS



(46) CATHOLIC
CELTIC CROSS



(47) FIRST CHURCH OF
CHRIST, SCIENTIST
(Cross & Crown)



(48) MEDICINE
WHEEL



(49) INFINITY



(51) LUTHER
ROSE



(52) LANDING
EAGLE



(53) FOUR
DIRECTIONS



(54) CHURCH
OF NAZARENE



(55) HAMMER
OF THOR



(56) UNIFICATION
CHURCH



(57) SANDHILL
CRANE

Emblem (98) MUSLIM (Islamic 5-Pointed Star) is not shown due to copyright.

**Arlington Nat'l Cemetery, Available Emblems Of Belief For Placement On
Government Headstones And Markers.⁵⁴**

⁵⁴ Arlington Nat'l Cemetery, *Available Emblems Of Belief For Placement On Government Headstones And Markers*, <http://www.arlingtoncemetery.mil/Funerals/Scheduling-a-Funeral/Headstones-and-Niche-Covers>.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

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THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 15-2597 as

Retained Court-appointed(CJA) Court-assigned(non-CJA) Federal Defender Pro Bono Government

COUNSEL FOR: State of West Virginia

as the (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

s/Elbert Lin (signature)

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CERTIFICATE OF SERVICE

I certify that on 04/11/2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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s/Elbert Lin Signature

04/11/2016 Date