



June 10, 2010

Molly Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1518

Re: *Jewish War Veterans of the United States of America v. City of San Diego*,
Nos. 08-56415 & 08-56436

Dear Ms. Dwyer:

In response to the May 26, 2010 Order filed by the panel in this case, *amicus curiae* The American Legion Department of California joins in the letter brief filed by the Federal Defendants and respectfully requests leave to file this short letter supplementing its brief in light of the United States Supreme Court's recent decision in *Salazar v. Buono*, --- S.Ct. ---, 2010 WL 1687118 (2010).

Justice Kennedy's plurality opinion in *Salazar* reinforces the Legion's central argument that a cross often has a dual significance that conveys both religious and secular messages, particularly when used to honor the sacrificial contributions of countless American veterans and their families:

[A] Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used 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. Here, a Latin cross in the desert 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 *14. And, as Justice Kennedy explained, the fact that the cross also carries religious significance does not render it constitutionally "off limits" for public memorials, like the one at issue in this case:

The goal of avoiding governmental endorsement [of religion] does not require eradication of all religious symbols in the public realm. A cross by the side of a public highway marking, for instance, the place where a state trooper perished need not be taken as a statement of governmental support for sectarian beliefs. The Constitution does not oblige government to avoid any public acknowledgment of religion's role in society.

Id. at *13.

Indeed, tearing down a long-standing cross memorializing our veterans would actually create, rather than relieve, social division and convey governmental hostility toward religion. *Id.* at *11 (noting that the government “could not remove the cross without conveying disrespect for those the cross was seen as honoring”); *cf. Van Orden v. Perry*, 545 U.S. 677 (2005) (Breyer, J., concurring) (to invalidate longstanding Ten Commandments display might “create the very kind of religiously based divisiveness that the Establishment Clause seeks to avoid”).

Thus, the *Salazar* decision further entrenches the jurisprudential course set by the U.S. Supreme Court in *Van Orden*, which upholds the constitutionality of long-standing, passive religious monuments that carry historical significance to our country. This Court should stay that course and affirm the district court’s decision allowing the Mt. Soledad Cross to remain in place.

Very truly yours,

/s/Timothy D. Chandler

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ALLIANCE DEFENSE FUND

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TDC/mls

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2010, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, which served counsel for all parties in the case.

/s/Timothy D. Chandler

Timothy D. Chandler, Esq.