

**UTAH HIGHWAY PATROL CROSSES
UNITED STATES SUPREME COURT
DECLINES REVIEW**

OCTOBER 31, 2011

Today, the United States Supreme Court **DECLINED** to consider the case involving the Utah Highway Patrol Crosses and a question of the separation of church and state. The Court **DENIED** petitions for certiorari review. The Justices considered the case at four different conferences over a month's period of time before making that decision. Justice Clarence Thomas, who would have granted the discretionary review, wrote a lengthy dissenting opinion. He suggested that this case would have been a good vehicle for a major review and revision of Establishment Clause jurisprudence. No other Justices joined in his opinion. Only four (4) votes from the nine (9) Justices are required to grant certiorari.

That decision was in response to requests by the State of Utah and the Utah Highway Patrol Association (UHPA) for discretionary review by the high court of a 2010 decision by the United States Court of Appeals for the Tenth Circuit which held the large memorial crosses on state property violated the First Amendment doctrine of separation of church and state.

When the Supreme Court declines to consider a case, the Court does not indicate *why*. It simply issues a short order stating "petition denied" with no explanation, as occurred in this case. Of the eight to ten thousand cases it is asked to hear each year, the Supreme Court normally hears only 50 - 70.

Because the Supreme Court declined to consider the case, the previous decision of the 10th Circuit court (*en banc* rehearing denied December 20, 2010) remains in effect and will be implemented. The 10th Circuit ruling is binding in Utah and in the five (5) other western states which are part of the 10th Circuit. That decision will effect other court cases throughout the nation as persuasive and as guiding but not controlling legal authority.

"Last year's decision by the 10th Circuit was a straight forward and rational application of the law. The decision was correct and appropriately applied Supreme Court precedent. I am not surprised the Supreme Court chose not to review the case" said Brian M. Barnard, counsel for American Atheists.

"There is no question that the UHP troopers should be honored: they gave their lives in the line of duty and in service to Utah," stated Barnard. "However, troopers can be and should be honored with a symbol that is inclusive of all Utahns. A state approved memorial should represent those who are not religious as well as those who are. The memorials should not emphasize one religious faith to the exclusion of all others. A memorial symbol endorsed by the State should not be religious but should be universal."

American Atheists, a New Jersey based group along with three (3) Utah members brought the federal court civil right action in December 2005 challenging the crosses as a violation of the Establishment Clause of the First Amendment. The suit alleged that the prominent placement of the crosses on state property and the placement of the official UHP logo on the monumental crosses constituted the improper mixing of church and state.

The 2010 written decision by the 10th Circuit Court of Appeals was thorough and well reasoned based on what a reasonable observer would understand upon encountering one of these monumental sized crosses standing solitary on the side of the road, at a state highway rest area or on the front lawn of the UHP building in Murray. No other person or entity in Utah is allowed to similarly erect such towering memorials on government land. The special permission granted these crosses and the presence of the official logo of the UHP improperly gave the appearance that Utah was endorsing Christianity. The Supreme Court has long held that the appearance of government support for religion, especially for one religion, violates the First Amendment.

In December, 2010, the Tenth Circuit Court in Denver, Colorado (*en banc, i.e.*, all its judge) were asked to re-considered the case. They let stand an earlier ruling from August 2010 (by a three judge panel of the appeals court) that the now fourteen (14) monumental size crosses sited on government property and adjacent to state highways all over the state violated the First Amendment. That court determined that the Roman cross is such an overwhelming symbol that its longstanding religious meaning can not be nullified or diluted by simply calling it a memorial and adding a logo. The appeals court held the twelve foot tall stark white steel crosses on state property bearing the official UHP logo constituted an improper religious endorsement by the State and thus violated the Establishment Clause of the United States Constitution.

After that ruling, the State and the private UHPA each separately requested the discretionary review by the Supreme Court. That Court reviews cases only when very significant constitutional issues of national import are involved or when there are conflicting decisions in lower appellate courts. This case is limited to Utah. There are no similar government approved displays or memorial programs for law enforcement officers in other states. No other states allow similar large crosses with state emblems in front of the state offices.

Today's Supreme Court ruling and 10th Circuit decision do not prevent the honoring of the troopers. The UHPA and the State must simply do so with symbols and in a manner that do not unconstitutionally endorse and support Christianity.

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