

No, the Pensacola Cross Need Not Come Down

A federal judge has ruled that a cross in Pensacola, Florida—a cross used for countless Easter sunrise services, Memorial Day observances and ceremonies honoring veterans—must come down because it violates the Constitution. This judge is 100 percent absolutely, emphatically, and utterly wrong.

Sadly, this misguided judge—U.S. District Judge Roger Vinson—is a Reagan appointee, proof that even good Republican presidents can appoint black-robed activists who bend, spindle and mutilate the Founders' Constitution beyond recognition.

This judge made his decision with considerable reluctance, as if we are supposed to feel sorry for him for not doing his job. But his weakness doesn't make his opinion any less egregious or misbegotten in any way. He even admits bizarrely that his ruling is inconsistent with the Constitution as crafted by the Founders.

"The historical record indicates that the Founding Fathers did not intend for the Establishment Clause to ban crosses and religious symbols from public property. Indeed, 'the enlightened patriots who framed our constitution'...would have most likely found this lawsuit absurd."

This aggravatingly timid judge thus admits that it is not the cross that violates the Constitution but his own ruling. Yet he cowers in abject submission to the rewriting of our founding document by the bullies and bigots of the Freedom from Religion Foundation and the American Humanist Association, who live in a desperate fear that someone, somewhere, is enjoying the constitutional right to the free exercise of religion.

What is so disastrously wrong with this judge's ruling?

First of all, Pensacola couldn't violate the First Amendment even if it tried.

The First Amendment was not written by the Founders to restrain any entity other than Congress. The very first word in the First Amendment makes this abundantly clear. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Now the First Amendment has never been amended. It still means exactly what it meant when the Founding Fathers wrote it. Only Congress can violate the First Amendment. It is constitutionally impossible for cities like Pensacola to violate the First Amendment since it wasn't even written to restrain them.

And since Congress is the only branch of government that can enact laws, Article I says quite plainly and unambiguously that "*all* legislative Powers... shall be vested in a Congress of the United States"—it is a restriction that applies to all the branches of the federal government. The executive branch has no legislative power, but more to the point, *neither does the judicial branch*.

It is quite literally impossible for a judge or a court—including the Supreme Court—to issue a ruling that is "the law of the land." No court has that power. But Judge Vinson meekly justified his ruling on the ground that "the law is the law," and that prior court rulings have established "the law of the land." No, Judge Vinson, they haven't. No court has that power.

The judge indicates that he is violating the Constitution only because he feels bound by previous court rulings to do so. "The Bayview Cross violates the Establishment Clause of the First Amendment to the United States Constitution, *as interpreted by the Supreme Court and circuit precedent*" (emphasis mine). But his oath of office is to uphold and

defend the *Constitution*, not flagrantly unconstitutional judicial opinions.

Further, the judge admits that current First Amendment jurisprudence is utterly untethered to the Constitution. Current court rulings are “historically unmoored, confusing, inconsistent, and almost universally criticized by both scholars and judges alike.”

This judge thus has mindlessly elevated the opinions of activist judges over the Constitution itself, which means he has violated his oath of office—an impeachable offense—by issuing this ruling. Rather than taking the courageous step of cleaning up this hopelessly tangled web, he has cravenly enmeshed himself in the same tangled weave. Shame on him.

Only Congress has the constitutional authority to make law, and it has never enacted a law that prohibits erecting crosses on public land. In fact, it can't. This is because the First Amendment forbids the entire federal government, including the judiciary, from “prohibit(ing) the free exercise” of religion in any way.

When a cross has been standing in place for 76 years, as the Pensacola cross has been, and it's yanked out of the ground by the autocratic decree of a federal judge, there is no question that the free exercise of religion is being trampled in a monstrously unconstitutional way.

There were just four plaintiffs in this case, two of whom now live in Canada, and one of whom used the site of the cross for a satanic ritual. Thus, according to the judge, only one plaintiff had actual “standing” to sue, and his “standing” to sue is that he was “personally offended” by the mere existence of the cross.

But there is absolutely no constitutional right not to be offended. And if there were, then the tens of thousands of Pensacolans who are offended at the prospect of the removal of

the cross have even more standing to sue to keep it right where it is. One Pensacola resident said, "Since it's [religion] in our constitution and in everything that we our lives that's all we've known and now all of a sudden they're gonna come in and change it, I think that's wrong." Another said, "I think it's a disgrace, I think it's awful, I've been here all my life, born and raised ... and I think it's terrible."

What we have here is the tyranny of the tiniest possible minority—one cranky individual—over the majority. This is exactly the state of affairs the Founders wrote the Constitution to prevent.

From a constitutional standpoint, whether or not Pensacola has a cross on public property is completely outside the jurisdiction of every federal judge. The Founders, by prohibiting any involvement of the federal government in religious liberty issues, reserved all such matters for the states.

The Florida state constitution is quite clear on the subject: "There shall be no law respecting the establishment of religion or *prohibiting or penalizing* the free exercise thereof."

The bottom line: whether or not Pensacola has a cross on public land is none of the federal government's business, and this includes the judiciary. A cross on public land is just fine with the people of Pensacola and the constitution of Florida, so fine, in fact, that to demolish it would violate the state constitution's protection for religious liberty.

How about we tell the Freedom From Religion Foundation and the American Humanist Association to take a hike, leave the cross right where it is and get back to the business of letting freedom ring? {eoa}

Bryan Fischer is host of the two-hour weekday "Focal Point"

program on American Family Radio.

This article was originally published at . Used with permission.