



Written by [Bruce Walker](#) on January 6, 2011

Will the Ninth Circuit Demand San Diego Change Its Name Too?

The Mount Soledad Cross was dedicated at a San Diego park on Easter Sunday in 1954 to honor veterans of the Korean War. Atheist Phillip Paulson, along with a Jewish war veterans group, has been trying to have the cross removed since 1989.

The people of San Diego strongly support keeping the cross where it is. In 2007, San Diegans voted overwhelmingly to donate the cross to the federal government as a way of keeping the cross in place. A federal court judged ruled that action unconstitutional. During the years of litigation, state and federal judges have ordered at different times that the cross be taken down. In 2006, the Supreme Court blocked lower court actions in order to allow time for appeals.



The Alliance Defense Fund, a Christian legal group based in Arizona, had been fighting efforts to remove the cross. Joe Infranco, senior counsel for the group, urged that the cross be left, saying: "There memory of those who sacrificed their lives shouldn't be dishonored because the ACLU finds a small number of people who are merely offended." The City of San Diego stood beside those who wanted to keep the cross up, as did the Obama Justice Department. In the end, however, militant opponents of any smidgen of Christianity in public life prevailed.

On January 4, 2011, a three-judge panel of the [Ninth Circuit Court of Appeals](#) ruled the cross violated the notional "separation of church and state," which has become an unwritten part of federal constitutional law. Any promotion of Christianity violated that idea of separation, and the court panel also noted that the area had a "well documented" history of anti-Semitism. The ACLU, predictably, applauded the decision saying that the "Constitution does not allow the government to exclude non-Christians by endorsing a clearly religious symbol."

Anyone who has visited those American military graves outside the long reach of the ACLU and Christophobic federal judges could quickly see how the placement of crosses was not inconsistent with the acceptance of other religions. At these graveyards in France and other places, one sees long, neat, perfectly manicured lawns with thousands of identical white crosses and, when the fallen American soldier was Jewish, an equally perfect, equally honored, [Mogen David](#). (Even at Arlington National Cemetery one sees etched upon the tombstones small crosses.) Those graveyards reflect historical fact: America was a nation founded by devout Christians. Would the ACLU or its Christophobic supporters demand the removal of the individual crosses of fallen soldiers, along with the individual Star of David for fallen Jewish patriots? Both are funded by the government.

America was also a nation that, before the First Amendment and while our nation's states had



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established state Christian religions, was also profoundly welcoming to Jews, who contributed out of love for this free land with their genius, their work, and their blood. The idea that states should not be able to express Christian values would have stunned Americans, no matter what their faith. The First Amendment itself has no application to states at all. It begins: "Congress shall make no law..." Congress and the federal government are not state governments.

The odd duck of "Incorporation" magically changed the language of the Constitution that federal judges read so that the provision of the 14th Amendment requiring "Due process of law" began to mean that all of the provisions of the Bill of Rights were now applicable to state governments as well. There is virtually nothing in the history of that amendment to support this peculiar claim and, in fact, federal judges, including the Supreme Court, explicitly rejected this doctrine of "Incorporation" for many years.

States, of course, were operating perfectly well without the Bill of Rights in the United States Constitution. Why? Were these states inhabited by bigoted yahoos who trampled gleefully over the rights of non-Christians? No, the reason was much simpler and much more rational. Consider the three biggest states, which each adopted their own protections against religious oppression before the Constitution (much less, the Bill of Rights) was adopted.

Part 16 of the [Virginia Bill of Rights](#), enacted one month before the Declaration of Independence, provides for religious liberty and concludes, "It is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other." Pennsylvania in [Article II of its Bill of Rights](#), also adopted long before the Constitution, provides that no one should be compelled to worship against his will, but also says "Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right." [Article II of the Massachusetts Bill of Rights](#), adopted nine years before the Constitution, provides protections, but also begins "It is the right as well as the duty of all min in society, publicly, and at stated seasons, to worship the SUPREME BEING."

Belief in God generally and in Christianity more specifically are included in most of these separate bills of right which states adopted long before the ACLU was around. How were these rights to be enforced and protected? Each state had its own judicial system, its own legislative branch, and its own governor. These state protections proved perfectly good in protecting not only religious liberties, but also all the other civil rights which we have come to associate with a just nation.

The California Constitution had similar provisions, indeed provisions that protect freedom of worship for all. But the preamble to that very 1859 California Constitution makes it clear that a lawsuit by an atheist offended by religious symbols would have a rough road interpreting that expression as contrary to the state constitution. The [preamble reads](#): "We, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution."

The tendrils of American religiosity and Christianity run even deeper, if these militant atheists had stopped to review the very terms in their petition. They were seeking to enjoin the City and County of San Diego (or, in Spanish, St. Didacus.) Why not ask the federal court, at the same time, to purge the very name of the city and county out of existence, and replace it with an utterly atheistic term, like "City 32º North, 117º West"? Why not purge equally offensive California names like the "City of Angels" or "Saint Francis" or "Sacrament"? Why should Los Angeles, San Francisco, and Sacramento be allowed to have hundreds of thousands of park and city signs with those overtly Christian names?

Why should cities with such profoundly religious names be allowed to tax people to support them?



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Maybe that could be the next stage in the taxpayers' revolt. Citizens of San Diego, San Francisco, Sacramento (state and city), Los Angeles, Santa Barbara, and similar cities and counties file an injunction against any city or municipal taxes or, given that the capital of California is named "Sacramento," any state taxes as well? Any bets on how the Ninth Circuit would rule on that sort of lawsuit?

Photo of Mount Soledad Cross: AP Images



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