

Appeal court hears Soledad Helix case | Lawyers argue for, against order to remove crosses

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CORRECTIONS | An article Wednesday about an appellate court hearing on the Mount Soledad and Mount Helix crosses misstated the size of the parcel of land on Mount Helix that the county deeded to the San Diego Historical Society. The county deeded to the society a small portion of land under the cross and the pedestal. The remainder of the land is in county ownership. The San Diego Union-Tribune regrets the error. (920508, B-2)

PASADENA -- A San Diego federal judge was wrong to order San Diego and La Mesa to tear down landmark crosses on Mount Soledad and Mount Helix, lawyers argued yesterday before an appellate court.

Attorneys for San Diego County and the cities of La Mesa and San Diego argued the crosses have historical significance beyond their status as religious symbols that should negate violations of church and state.

They have asked that the case be heard by a state court, or sent back to the federal judge for a rehearing, or for a ruling that allows the crosses to remain.

Three lawsuits were filed on behalf of James Ellis, Philip Paulson, John P. Murphy, the American Civil Liberties Union and others who contend the crosses are unconstitutional. Their attorneys argued yesterday that the crosses have no historical significance, deter non-Christians from using the parks and endorse Christianity above other religions.

Judges Thomas Tang, Mary M. Schroeder and Robert Beezer of the 9th Circuit Court of Appeal took the arguments under submission. They did not indicate when they might rule. The panel sometimes takes years to issue a decision.

The cross atop Mount Soledad, owned by San Diego, was first erected in 1913, replaced in 1923 after it was stolen by vandals, and replaced again in 1952 after it was blown over in a storm.

Kristine Wilkes, a lawyer representing San Diego and La Mesa, said the cross was first dedicated as a war memorial and possibly was erected by the American Legion.

But, Peter Irons, Paulson's lawyer and a political science professor at UCSD, said the cross "was erected as a majestic backdrop to Easter services," which have been celebrated there ever since. "The dedication program referred to the cross not as a war memorial but as a 'gleaming symbol of Christianity,'" Irons said.

The Mount Helix cross and a 4,000-seat amphitheater were built on the outskirts of La Mesa in 1917 by Mary Yawkey White and Cyrus Carpenter Yawkey as a memorial to their mother. The land was deeded to the county in 1929, with the provision it must be preserved or would revert to the family or its decedents.

U.S. District Judge Gordon Thompson Jr. ruled in December that the 40-foot crosses must be removed because they violate state constitutional provisions, including one that prohibits the government from even appearing to prefer a religion over another. He gave the county 90 days to remove the Mount Helix cross. The county quickly deeded a three-acre area containing the cross to the San Diego Historical Society.

Betty Wheeler, an attorney for the ACLU, said the transfer still poses a problem because the county pays for the upkeep of the amphitheater and a parking lot that serves the park that leads to the cross.

But, the court said it would not decide that issue, which could be the subject of another lawsuit.

Judge Beezer questioned whether the county had breached the trust deed under which it promised the Yawkey family to preserve the land.

Both he and Schroeder questioned the historical significance of the Mount Helix cross.

"It's a simple homegrown story of a mother and two kids who wanted to say to their mother, 'I love you,' " said San Diego Deputy County Council Michael Poyner. "History is a very broad thing."

Michael Crowley, a lawyer representing plaintiff James Ellis who sued La Mesa, argued the Mount Helix cross as depicted on insignia worn by city employees such as police is unconstitutional.

He said it leads people to believe "this is a Christian police force."

Daniel Butcher, a lawyer for La Mesa and San Diego, argued the cross issue should be in state court.

"What is more important to the state of California than its interpretation of its own Constitution?" he told the appellate panel.

San Diego officials sought to transfer the 225-square-foot parcel under the Mount Soledad cross to the Mount Soledad Memorial Association, a non-profit group that built and owns the current cross. But the transaction requires a two-thirds majority of city voters since the city charter forbids transfers of dedicated parkland. The issue is on the June ballot.

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