

Supreme Court rules cross in national park might be preserved

WASHINGTON – With a tangled set of six opinions, the Supreme Court ruled April 28 that it could be constitutional for the federal government to permit a large cross to stay within the boundaries of a national preserve in the California desert.

But it also sent the case involving the transfer of ownership of a small plot of federal land back to lower courts for further consideration.

With a main opinion written by Justice Anthony Kennedy and several separate opinions that agreed on this aspect, a 5-4 majority said lower courts went too far in refusing to allow the transfer of the piece of land where the cross stands to a nongovernmental entity, which would keep it standing and maintain it. The transfer was ordered by Congress to address a legal challenge by a former National Park Service employee who objected to having one faith represented by a symbol on federal property.

The cross was placed as a war memorial in 1934 by the Veterans of Foreign Wars on a rocky hillside in an isolated section of the 1.6 million-acre Mojave National Preserve in San Bernardino County. Private groups and individuals have maintained and replaced the cross over the years. The site is far from areas that are frequently traveled, but it has been used over the years for Easter religious services.

A larger majority of the court agreed, 7-2, that the retired employee, Frank Buono, was entitled to sue over the cross' presence on government-owned land. And a separate 4-1 opinion sent the case back to California federal courts that barred the land transfer, telling them to reconsider the situation in light of what Congress intended by ordering the transfer. The other four justices did not address this point.

Noting that an underlying question about the land-transfer statute must first be resolved before the ultimate fate of the cross is settled, Kennedy pointed out that so far the court has "refrained from making sweeping pronouncements," when it comes to matters like that raised in *Salazar v. Buono*, "and this case is ill-suited for

announcing categorical rules.”

The 8-foot-high cross has been covered by a wooden box while the case has been in litigation.