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## Firm Achieves Victory When Cross Display Found Unconstitutional

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In conjunction with the American Civil Liberties Union (ACLU), WilmerHale achieved an important litigation victory when the Court of Appeals for the Ninth Circuit held that the public display of a Latin cross atop Mt. Soledad in La Jolla, California violates the US Constitution. For clients Jewish War Veterans of the United States of America and three individuals, this achievement is a crucial step forward in a longstanding battle over the cross.

A cross was first built on Mt. Soledad in 1913, and litigation over the constitutionality of its display on public land has been ongoing and highly publicized for more than two decades. The cross is now incorporated with other elements into the Mt. Soledad Veterans Memorial, but at 43 feet tall, it is far larger and more prominent than the other elements of the memorial that surround it.

The city of San Diego, which previously owned the land on which the cross stands, tried to maintain the memorial in the face of multiple federal court rulings holding it unconstitutional. When efforts to transfer the land to private hands failed in 2006, ownership was transferred to the federal government by an act of Congress; soon after, two lawsuits challenging the display, including the one brought by the firm, were filed against San Diego and the federal government. Following discovery, in 2008, the US District Court for the Southern District of California granted the government's motion for summary judgment, holding that the memorial did not violate the Establishment Clause of the US Constitution.

WilmerHale worked with Dan Mach, director of the ACLU Program on Freedom of Religion and Belief, and David Blair-Loy of the Southern California ACLU in putting together an appeal. The firm argued before the Ninth Circuit that the display of the cross on federally owned land had the effect of advancing and endorsing religion, and did not have a primarily secular purpose.

A unanimous panel of the Ninth Circuit reversed the district court's decision and remanded with instructions to enter summary judgment in favor of the plaintiffs. Writing for the panel, Judge M. Margaret McKeown held that the Mt. Soledad display "primarily conveys a message of government endorsement of religion that violates the Establishment Clause."

"The opinion of the Ninth Circuit speaks eloquently to why this display offends the Constitution, and

it provides important guidance in what is a sometimes murky, and always intensely fact-based, area of law,” says WilmerHale Partner [Steve Hut](#), a member of the firm’s Litigation Department, who led the WilmerHale team.

The WilmerHale team included Hut and Counsel [Adam Raviv](#); former counsel Jonathan Siegelbaum (who has, sadly, since passed away), Ryan Phair and Eric Columbus; former senior associate Matt Jones (who argued the case in the Ninth Circuit); and former associate Justin Rubin.