

No. 17-13025

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**In the United States Court of Appeals for the Eleventh Circuit**

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AMANDA KONDRATYEV, *et al.*

*Plaintiffs-Appellees,*

*v.*

CITY OF PENSACOLA, FLORIDA, *et al.*

*Defendants-Appellants.*

On Appeal from the United States District Court  
for the Northern District of Florida  
No. 3:16-cv-00195-RV-CJK

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**APPELLANTS' OPENING BRIEF**

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, counsel for the City of Pensacola, Florida, Ashton Hayward, and Brian Cooper (collectively, the city) represents that the city does not have any parent entities and does not issue stock. Counsel further certifies, to the best of his knowledge, that the following persons and entities have an interest in this appeal:

Allen, Norton & Blue, PA (law firm for Appellants)

American Humanist Association (law firm for Appellees)

Becket Fund for Religious Liberty (law firm for Appellants)

Beggs & Lane, RLLP (law firm for Appellants)

City of Pensacola, Florida (Appellant)

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Vinson, C. Roger (District Court Judge)

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Dated September 26, 2017

Respectfully submitted,

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## **STATEMENT REGARDING ORAL ARGUMENT**

The City of Pensacola respectfully requests oral argument. This case presents important questions regarding the interpretation of the Establishment Clause in light of recent Supreme Court precedent, and the city respectfully submits that oral argument is necessary for a full exposition of the legal issues and facts in the case.

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT .....	C-1
STATEMENT REGARDING ORAL ARGUMENT .....	i
TABLE OF AUTHORITIES .....	v
JURISDICTIONAL STATEMENT .....	1
STATEMENT OF THE ISSUES .....	2
STATEMENT OF THE CASE .....	3
I. Introduction .....	3
II. Factual Background.....	6
A. Pensacola’s History .....	6
B. Pensacola’s Parks.....	8
C. Access to Pensacola’s Parks .....	12
D. Bayview Park .....	14
E. The Plaintiffs.....	23
III. Procedural Background .....	25
IV. Standard of Review .....	26
SUMMARY OF ARGUMENT .....	26
ARGUMENT .....	28

I.	Plaintiffs lack standing.....	28
A.	The Kondrat'yevs lack standing. ....	29
B.	Ryland lacks standing.....	29
C.	Suhor lacks standing.....	32
II.	Pensacola's actions are constitutional.....	34
A.	This case is controlled by <i>Van Orden</i> and <i>Town of Greece</i> , not <i>Lemon</i> . ....	36
1.	The Supreme Court has abandoned the <i>Lemon</i> test. ....	36
2.	This Court and other circuits have abandoned the <i>Lemon</i> test. ....	42
3.	The district court erred by applying the <i>Lemon</i> test. ....	45
B.	Pensacola's actions are constitutional under the historical approach in <i>Van Orden</i> and <i>Town of Greece</i> .....	50
C.	Pensacola's actions are constitutional under the "legal judgment" approach in <i>Van Orden</i> .....	58

D. Pensacola’s actions are constitutional under the <i>Lemon</i> test.....	62
CONCLUSION .....	68

## TABLE OF AUTHORITIES

Cases	Page(s)
<i>ACLU of Ga. v. Rabun Cty. Chamber of Commerce, Inc.,</i> 698 F.2d 1098 (11th Cir. 1983).....	<i>passim</i>
<i>ACLU of Ky. v. Mercer County,</i> 432 F.3d 624 (6th Cir. 2005).....	44
<i>ACLU Neb. Found. v. City of Plattsmouth,</i> 419 F.3d 772 (8th Cir. 2005).....	44
<i>ACLU-NJ v. Township of Wall,</i> 246 F.3d 258 (3d Cir. 2001) .....	32
<i>Am. Atheists, Inc. v. Davenport,</i> 637 F.3d 1095 (10th Cir. 2010).....	64-65
<i>Am. Jewish Cong. v. City of Chicago,</i> 827 F.2d 120 (7th Cir. 1987).....	65-66
<i>Atheists of Fla., Inc. v. City of Lakeland,</i> 713 F.3d 577 (11th Cir. 2013).....	43
<i>Bats v. Cobb County,</i> 495 F. Supp. 2d 1311 (N.D. Ga. 2007).....	31



*Bischoff v. Osceola County,*

222 F.3d 874 (11th Cir. 2000)..... 28

*Bd. of Educ. v. Allen,*

392 U.S. 236 (1968)..... 38

*Bown v. Gwinnett Cty. Sch. Dist.,*

112 F.3d 1464 (11th Cir. 1997)..... 62

*Capitol Square Review & Advisory Bd. v. Pinette,*

515 U.S. 753 (1995)..... 41

*Card v. City of Everett,*

520 F.3d 1009 (9th Cir. 2008)..... 44

*Comm. for Pub. Educ. & Religious Liberty v. Regan,*

444 U.S. 646 (1980)..... 38

*County of Allegheny v. Am. Civil Liberties Union Greater*

*Pittsburgh Chapter,*

492 U.S. 573 (1989)..... *passim*

*Cutter v. Wilkinson,*

544 U.S. 709 (2005)..... 40

*D.C. Common Cause v. District of Columbia,*

858 F.2d 1 (D.C. Cir. 1988)..... 34

*DaimlerChrysler Corp. v. Cuno*,

547 U.S. 332 (2006)..... 34

*Doe ex rel. Doe v. Elmbrook Sch. Dist.*,

687 F.3d 840 (7th Cir. 2012)..... 38

*Doe v. Indian River Sch. Dist.*,

653 F.3d 256 (3d Cir. 2011) ..... 38

*Doe v. Tangipahoa Par. Sch. Bd.*,

494 F.3d 494 (5th Cir. 2007)..... 29

*Elmbrook Sch. Dist. v. Doe*,

134 S. Ct. 2283 (2014)..... 49

*Everson v. Bd. of Educ.*,

330 U.S. 1 (1947)..... 34, 36, 37

*Felix v. City of Bloomfield*,

847 F.3d 1214 (10th Cir. 2017)..... 57

*\*Freedom From Religion Found., Inc. v. Obama*,

641 F.3d 803 (7th Cir. 2011)..... 30, 32

*Glassman v. Arlington County*,

628 F.3d 140 (4th Cir. 2010)..... 62

*\*Glassroth v. Moore,*

335 F.3d 1282 (11th Cir. 2003)..... *passim*

*Gonzales v. North Township of Lake County,*

4 F.3d 1412 (7th Cir. 1993)..... 34

*Good News Club v. Milford Cent. Sch.,*

533 U.S. 98 (2001)..... 39

*Green v. Haskell Cty. Bd. of Comm’rs,*

574 F.3d 1235 (10th Cir. 2009)..... 39, 44

*Hinrichs v. Bosma,*

440 F.3d 393 (7th Cir. 2006)..... 34

*Hosanna-Tabor Evangelical Lutheran Church & Sch. v.*

*EEOC,*

565 U.S. 171 (2012)..... 40

*Jefferson County v. Acker,*

210 F.3d 1317 (11th Cir. 2000)..... 50

*King v. Richmond County,*

331 F.3d 1271 (11th Cir. 2003)..... 62, 67

*Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.,*

508 U.S. 384 (1993)..... 38

*Lemon v. Kurtzman,*

403 U.S. 602 (1971)..... *passim*

*Lewis v. Casey,*

518 U.S. 343 (1996)..... 34

*Lujan v. Defs. of Wildlife,*

504 U.S. 555 (1992)..... 28

*Marsh v. Chambers,*

463 U.S. 783 (1983)..... 51

*McCreary County v. ACLU of Ky.,*

545 U.S. 844 (2005)..... *passim*

*McGowan v. Maryland,*

366 U.S. 420 (1961)..... 37

*Myers v. Loudoun Cty. Pub. Schs.,*

418 F.3d 395 (4th Cir. 2005)..... 43

*Niemotko v. Maryland,*

340 U.S. 268 (1951)..... 13, 65

*\*Pelphrey v. Cobb County,*

547 F.3d 1263 (11th Cir. 2008)..... 31, 42, 46, 48

*Pleasant Grove City v. Summum*,

555 U.S. 460 (2009)..... 66

*Saladin v. City of Milledgeville*,

812 F.3d 687 (11th Cir. 1987)..... 31

*\*Salazar v. Buono*,

559 U.S. 700 (2010)..... *passim*

*Smith v. Allen*,

502 F.3d 1255 (11th Cir. 2007)..... 26

*Staley v. Harris County*,

485 F.3d 305 (5th Cir. 2007)..... 58

*\*Town of Greece v. Galloway*,

134 S. Ct. 1811 (2014)..... *passim*

*United States v. DiFalco*,

837 F.3d 1207 (11th Cir. 2016)..... 49

*United States v. Gallo*,

195 F.3d 1278 (11th Cir. 1999)..... 49

*United States v. Madden*

733 F.3d 1314 (11th Cir. 2013)..... 49

*Utah Highway Patrol Ass’n v. Am. Atheists, Inc.*,

565 U.S. 994 (2011)..... 38

*\*Valley Forge Christian Coll. v. Ams. United for Separation  
of Church & State, Inc.*,

454 U.S. 464 (1982)..... 29, 30, 32

*\*Van Orden v. Perry*,

545 U.S. 677 (2005)..... *passim*

*Walz v. Tax Comm’n*,

397 U.S. 664 (1970)..... 37, 38

*Zelman v. Simmons-Harris*,

536 U.S. 639 (2002)..... 39

## **Rules**

Fed. R. Civ. P. 56(a)..... 26

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16, 2017 ..... 13

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<https://tinyurl.com/yaaqk4tc> (last visited Sept. 26, 2017) ..... 13

John Appleyard, <i>Who Are the People Behind Pensacola’s Street Names?</i> , Pensacola News J. (June 13, 2015), <a href="https://tinyurl.com/y9sjtbrk">https://tinyurl.com/y9sjtbrk</a> .....	9
Anthony Atwood, <i>A State of War: Florida from 1939 to 1945</i> , FIU Electronic Theses and Dissertations (2012), <a href="https://tinyurl.com/ydekgu7b">https://tinyurl.com/ydekgu7b</a> .....	8
<i>Bayview Park Tennis Courts</i> , Tennis Pensacola, <a href="https://tinyurl.com/yca2chga">https://tinyurl.com/yca2chga</a> (last visited Sept. 26, 2017) .....	14
<i>Bernardo de Gálvez</i> , Nat’l Park Serv., <a href="https://tinyurl.com/ybell66x">https://tinyurl.com/ybell66x</a> (last updated Apr. 14, 2015) .....	6
<i>Black Attendance Is High at Seafood Festival</i> , Pensacola Voice (Oct. 2, 2014), <a href="https://tinyurl.com/ybzeuedb">https://tinyurl.com/ybzeuedb</a> .....	13
Drew Buchanan, <i>190 Years Ago, President Adams Establishes Navy Yard at Pensacola</i> , The Pulse (Dec. 4, 2015), <a href="https://tinyurl.com/ya7zz2ny">https://tinyurl.com/ya7zz2ny</a> .....	8, 11
<i>Chapel of the Centurion</i> , Order of Centurions, <a href="https://tinyurl.com/y9zr89hn">https://tinyurl.com/y9zr89hn</a> (last visited Sept. 26, 2017).....	54
Jesse H. Choper, <i>The Establishment Clause and Aid to Parochial Schools—An Update</i> , 75 Cal. L. Rev. 5 (1987) .....	38

City of Pensacola, Policies of the City Council 4.31-4.32	
(2011), <a href="https://tinyurl.com/ybl6pg9n">https://tinyurl.com/ybl6pg9n</a> .....	12
<i>Columbus Doors</i> , Architect of the Capitol,	
<a href="https://tinyurl.com/yafhc9mq">https://tinyurl.com/yafhc9mq</a> (last updated May 17, 2016) .....	55
<i>Community Pulse</i> , Pensacola News J., Nov. 8, 1982 .....	17
<i>Discovery of the Mississippi by De Soto</i> , Architect of the	
Capitol, <a href="https://tinyurl.com/ycj9qe2t">https://tinyurl.com/ycj9qe2t</a> (last updated Apr. 29,	
2016) .....	55
<i>Facility Rentals</i> , Pensacola Parks and Recreation,	
<a href="https://tinyurl.com/ydakr6ap">https://tinyurl.com/ydakr6ap</a> (last visited Sept. 26, 2017) .....	13
<i>Fort Barrancas Area</i> , Nat'l Park Serv.,	
<a href="https://tinyurl.com/y92wrazd">https://tinyurl.com/y92wrazd</a> (last updated Feb. 28, 2017) .....	9
<i>Fort Pickens</i> , Nat'l Park Serv., <a href="https://tinyurl.com/gnlc3yv">https://tinyurl.com/gnlc3yv</a>	
(last updated Jan. 6, 2016) .....	9
Hana Frenette, <i>Black Lives Matter Walk Draws 100-plus</i> ,	
Pensacola News J., July 17, 2016 .....	13
<i>The Great Seal of the United States</i> , U.S. Dep't of State	
Bureau of Pub. Affairs 4-6 (July 2003),	
<a href="http://tinyurl.com/ycca6rgs">http://tinyurl.com/ycca6rgs</a> .....	53



*History of Pensacola Parks*, Pensacola Parks &

Recreation Dep't,

<http://www.cityofpensacola.com/documentcenter/view/>

9966..... *passim*

Lynn Hatter, *Pensacola Discovery Complicates Title of*

*“Oldest City,”* WFSU News (Dec. 17, 2015),

<https://tinyurl.com/hntt54q> ..... 6

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*at the Founding, Part I: Establishment of Religion,*

44 Wm. & Mary L. Rev. 2105 (2003) ..... 57

Michael W. McConnell, *Religious Freedom at a Crossroads,*

59 U. Chi. L. Rev. 115 (1992)..... 38

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Aug. 11, 1995 ..... 17

*Old Cadet Chapel*, U.S. Military Acad. West Point,

<https://tinyurl.com/yahugoex>

(last visited Sept. 26, 2017) ..... 54

<i>Pensacola Senior Games Presented by Humana, Pensacola Parks &amp; Recreation, <a href="https://tinyurl.com/y9yssa4v">https://tinyurl.com/y9yssa4v</a></i>	
(last visited Sept. 26, 2017) .....	13
<i>Pensacola Women’s March Holding Event Saturday, Pensacola News J., Jan. 18, 2017</i> .....	13
Aleksandra Sandstrom, <i>God or the Divine is Referenced in Every State Constitution</i> , Pew Research Center (Aug. 17, 2017), <a href="http://tinyurl.com/yclcv7o4">http://tinyurl.com/yclcv7o4</a> .....	53
Amber Solnick, <i>Gonna Make You Sweat</i> , Pensacola News J., Aug. 13, 2015 .....	22
Paul Turnbull, <i>The Land of Flowers: A Look at the History of Florida</i> (2017) .....	6, 7, 8
U.S. Navy, <i>History</i> , Naval Air Station Pensacola, <a href="https://tinyurl.com/yd6o7jgq">https://tinyurl.com/yd6o7jgq</a> (last visited Sept. 26, 2017) .....	7, 8
<i>What is Fiesta? Fiesta of Five Flags, <a href="http://www.fiestaoffiveflags.org/">http://www.fiestaoffiveflags.org/</a></i>	
(last visited Sept. 25, 2017) .....	7
<i>What’s Going On: Faith at Work</i> , Pensacola News J., May 25, 2001 .....	17

## **JURISDICTIONAL STATEMENT**

The district court exercised jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction over this timely appeal under 28 U.S.C. § 1291. *See* Dkt. 46 (notice of appeal dated July 5, 2017); Dkt. 47 (final judgment entered *nunc pro tunc* to June 19, 2017). As explained below, however, this case should be dismissed for lack of subject matter jurisdiction because Plaintiffs lack Article III standing.

## **STATEMENT OF THE ISSUES**

The Plaintiffs claim that the City of Pensacola has violated the Establishment Clause by declining to remove a monument that was erected in a city park over 76 years ago. The monument is one of over 170 expressive displays in Pensacola's parks. But Plaintiffs object to the monument because it takes the form of a cross. The issues in this appeal are:

1. Whether Plaintiffs have standing to sue when they have not incurred any cost to avoid the allegedly "offensive" monument.
2. Whether Pensacola is violating the Establishment Clause by declining to remove a monument that was erected over 76 years ago and is now one of over 170 expressive displays in Pensacola's parks.

## STATEMENT OF THE CASE

### I. Introduction

This appeal will decide whether the citizens of Pensacola can remember their history and culture as they see fit or must instead purge the parts deemed to be too religious. At issue is a monument erected by citizens of Pensacola over 76 years ago. It is one of over 170 displays in Pensacola's parks, which collectively tell the story of the city's rich history and culture. But Plaintiffs argue that this monument must be removed solely because it is a cross. Fortunately, the First Amendment does not require this sort of iconoclastic hostility toward religion.

The district court acknowledged that the framers of the First Amendment “would have most likely found this lawsuit absurd,” because they “did not intend for the Establishment Clause to ban crosses and religious symbols from public property.” Dkt. 41 at 6. The court also said that if it applied the Supreme Court's decision in *Van Orden v. Perry*, 545 U.S. 677 (2005), and considered the “context, history, passage of time, placement of the cross, and overall purpose of the Establishment Clause,” Pensacola's actions “might well pass constitutional muster.” Dkt. 41 at 18. Nevertheless, the court felt bound to apply the “widely criticized” *Lemon*

test” and held that allowing the monument to remain served no legitimate secular purpose and was therefore unconstitutional. Dkt. 41 at 7.

That was a mistake. In its most recent Establishment Clause decisions, the Supreme Court has rejected the *Lemon* test, concluding that it is “not useful” in dealing with a “passive monument.” *Van Orden*, 545 U.S. at 686 (plurality). Instead, the Court has held that “the Establishment Clause must be interpreted ‘by reference to historical practices and understandings.’” *Town of Greece v. Galloway*, 134 S. Ct. 1811, 1819 (2014) (quoting *County of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 670 (1989) (Kennedy, J., concurring in part and dissenting in part)). Given the relevant historical practices at issue here—including an “unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789,” *Van Orden*, 545 U.S. at 686—this is not a close case. Allowing Pensacola’s citizens to keep their monument falls well within that history.

But even assuming the *Lemon* test is still relevant, the district court misapplied it. The court held that Pensacola necessarily had a religious

purpose in allowing the cross because the cross is an “exclusively religious symbol.” Dkt. 41 at 16. But the Supreme Court has said just the opposite, noting that a cross can have a “complex meaning beyond the expression of religious views,” including a “historical meaning.” *Salazar v. Buono*, 559 U.S. 700, 716, 717 (2010) (plurality). That is true here. The cross memorializes how private citizens in Pensacola came together to support each other during World War II, and it acknowledges “the role of religion in American life”—which is expressly permitted under *Van Orden*, 545 U.S. at 686. Thus, keeping the cross has an obvious secular purpose: to preserve part of Pensacola’s rich history and culture.

Ultimately, the Court need not reach any of these issues, because Plaintiffs lack standing to sue. Two plaintiffs submitted no evidence of standing and have since left the country. The third plaintiff does not live in Pensacola and has suffered no cognizable injury. The last plaintiff not only lacks any injury, but negated any claim of injury by reserving the cross and using it for his own “satanic purposes.”

Thus, the case should be dismissed for lack of jurisdiction. Alternatively, it should be resolved in Pensacola’s favor because Pensacola’s actions are fully consistent with the Establishment Clause.

## II. Factual Background

### A. Pensacola's History

Pensacola is a historic city. It was founded by Spanish explorer Don Tristán de Luna y Arellano in 1559—well before Jamestown (1607) or St. Augustine (1565)—making it arguably the oldest city in the United States.<sup>1</sup>

Over its 450-year history, Pensacola has changed hands many times. The early Spanish settlement was captured by the French from 1719 to 1722.<sup>2</sup> Next came the British, who took the area in 1763 and made it the capital of British West Florida.<sup>3</sup> Spain recaptured the area in 1781 in the Battle of Pensacola.<sup>4</sup> American General Andrew Jackson captured it in 1818 and was later sworn in there as the first governor of the Florida

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<sup>1</sup> Lynn Hatter, *Pensacola Discovery Complicates Title of “Oldest City,”* WFSU News (Dec. 17, 2015), <https://tinyurl.com/hntt54q>.

<sup>2</sup> Paul Turnbull, *The Land of Flowers: A Look at the History of Florida* 21 (2017).

<sup>3</sup> *Id.* at 21-22.

<sup>4</sup> *Bernardo de Gálvez*, Nat'l Park Serv., <https://tinyurl.com/ybell66x> (last updated Apr. 14, 2015).



Territory.<sup>5</sup> In 1861, Florida seceded from the Union and joined the Confederacy.<sup>6</sup> But Union troops captured it the following year and it was re-admitted to the Union in 1868.<sup>7</sup>

All told, Pensacola has been governed by five nations: Spain, France, Britain, the Confederacy, and the United States. This has earned Pensacola the nickname “The City of Five Flags,” which its residents celebrate every summer in a 10-day “Fiesta of Five Flags Celebration”—one of the oldest historical festivals in the State.<sup>8</sup>

As a strategic port on the Gulf of Mexico, Pensacola also has a long military history. The first Spanish presidios were built in 1698, 1722, and 1754.<sup>9</sup> After the War of 1812, President Adams built the Pensacola Navy Yard, which soon became “one of the best equipped naval stations in the country.”<sup>10</sup> The United States also built three forts to protect the area’s

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<sup>5</sup> Turnbull, *supra* n.2, at 22-23, 61.

<sup>6</sup> *Id.* at 24.

<sup>7</sup> *Id.* at 24-25.

<sup>8</sup> *What is Fiesta?* Fiesta of Five Flags, <http://www.fiestaoffiveflags.org/> (last visited Sept. 25, 2017).

<sup>9</sup> Turnbull, *supra* n.2, at 20-21.

<sup>10</sup> U.S. Navy, *History*, Naval Air Station Pensacola, <https://tinyurl.com/yd6o7jgq> (last visited Sept. 26, 2017).

natural harbor: Fort Barrancas, Fort Pickens, and Fort McRee.<sup>11</sup> During World War I, Pensacola housed the nation's first and only naval air station.<sup>12</sup> And during the height of World War II, that air station produced approximately a thousand pilots a month.<sup>13</sup> Pensacola's role in the war was so significant that it prompted two official visits from President Roosevelt.<sup>14</sup>

## **B. Pensacola's Parks**

The people of Pensacola place a high value on this history. The historic Spanish, French, and British flags fly alongside the American and Florida flags outside City Hall. The walls of the original Navy Yard still stand at the modern Naval Air Station.<sup>15</sup> Fort Pickens and Fort Barrancas still guard the entrance to Pensacola Bay, now recognized as national historic

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<sup>11</sup> Turnbull, *supra* n.2, at 23.

<sup>12</sup> Naval Air Station Pensacola, *supra* n.10.

<sup>13</sup> Anthony Atwood, *A State of War: Florida from 1939 to 1945*, FIU Electronic Theses and Dissertations (2012), at 33-34, 71-73, 193, <https://tinyurl.com/ydekgu7b>.

<sup>14</sup> *Id.* at 34 n.101, 42 n.131.

<sup>15</sup> Drew Buchanan, *190 Years Ago, President Adams Establishes Navy Yard at Pensacola*, The Pulse (Dec. 4, 2015), <https://tinyurl.com/ya7zz2ny>.

landmarks.<sup>16</sup> Pensacola's streets are named after prominent citizens from its past.<sup>17</sup> And Pensacola celebrates its history through a wide variety of displays in its parks.

Pensacola maintains 93 public parks and open spaces hosting over 170 expressive displays. *See History of Pensacola Parks*, Pensacola Parks & Recreation Dep't, <http://www.cityofpensacola.com/documentcenter/view/9966>, attached as Addendum 1 to this brief. There are over 140 monuments and memorials highlighting the people, places, and events that have shaped the city's history. *Id.* There are dozens of memorial plaques dedicated to citizens who contributed to the Pensacola community. *Id.* There are numerous war memorials. *Id.* And there are more than a dozen walls or walkways of honor inscribed with numerous names of local citizens and their loved ones. *Id.*

Many of these displays commemorate individuals who contributed to Pensacola's history. Plaza de Luna, for example, has a bronze statue of

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<sup>16</sup> *Fort Barrancas Area*, Nat'l Park Serv., <https://tinyurl.com/y92wrazd> (last updated Feb. 28, 2017); *Fort Pickens*, Nat'l Park Serv., <https://tinyurl.com/gn1c3yv> (last updated Jan. 6, 2016).

<sup>17</sup> John Appleyard, *Who Are the People Behind Pensacola's Street Names?*, Pensacola News J. (June 13, 2015), <https://tinyurl.com/y9sjtbrk>.

Don Tristán de Luna, the founder of the first Pensacola colony. *Id.* at 18. Miranda Square has a bust of Francisco de Miranda, a Venezuelan general who participated in the Battle of Pensacola. *Id.* at 16. Plaza Ferdinand VII has a bust of Andrew Jackson, located at the spot where he was inaugurated as Florida's first governor. *Id.* at 19. Martin Luther King, Jr., Plaza has a monument and bust of the famous civil rights leader. *Id.* at 16. Legion Field has a monument to Charles Jefferson Marvray I, an African-American baseball player who served in the Army and later helped integrate local teams and ballparks. *Id.* at 14.

Other monuments commemorate significant places and events from Pensacola's history. Fort George Park contains the ruins of a large British fort from the Battle of Pensacola. *Id.* at 10. Chimney Park features the remnants of a power plant destroyed during the Confederate evacuation. *Id.* at 16. Veterans Memorial Park includes memorials to the Revolutionary War, World Wars I and II, the Korean War, the Vietnam War, the Global War on Terror, and many other aspects of military service. *Id.* at 23-24. And across the bay in Pensacola Beach there is a 10-foot tall

cross erected where Tristán de Luna celebrated the first mass in the New World.<sup>18</sup>

Still other displays recognize the many groups and individuals that have contributed to Pensacola's culture. Wayside Park has a bronze monument noting that the park was dedicated in 1943 and sponsored by the Junior Chamber of Commerce, Lions Club, Rotary Club, and Angler's Club. *Id.* at 25. Seville Square includes a granite monument sponsored by the Seville Square Childhood Reunion Group and dedicated to those who spent their youth in the area. *Id.* at 21. It also includes a bronze plaque dedicated to Mary Turner Rule Reed, who helped inspire Pensacola's historic preservation movement. *Id.* Aviation Discovery Park has a display describing the many volunteers needed to make the park a reality. *Id.* at 2. Eastgate-Elizabeth Ferniany Peaden Park has a plaque dedicating the gazebo to Ms. Peaden, who helped improve the park. *Id.* at 9. And Plaza de Luna has a plaque commemorating the founding of the first Presbyterian Church in Pensacola in 1845. *Id.* at 18.

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<sup>18</sup> Drew Buchanan, *Settlement of Pensacola Marked the "Beginning of Christianity" in America*, The Pulse (Apr. 24, 2016), <https://tinyurl.com/ydhyy474>.

This is just a small sampling of the over 170 displays that appear in Pensacola's parks and help commemorate its history and culture. A complete listing is attached as Addendum 1.<sup>19</sup>

### **C. Access to Pensacola's Parks**

Pensacola's parks are also a place for citizens to gather. The parks are open daily for recreation and education. They also host numerous private events. Any gathering with more than 30 people is called a "special event" and is welcome subject to a standard permitting process. Dkt. 31-16 at 43-44. Pensacola's parks host scores of these events each year, ranging from the Fiesta of Five Flags and Seafood Festival, which draw tens of

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<sup>19</sup> Pensacola also has a process by which "individuals, organizations, City Council members, or the Mayor" may propose removing a monument. City of Pensacola, Policies of the City Council 4.31-4.32 (2011), <https://tinyurl.com/ybl6pg9n>. Plaintiffs did not invoke this process before filing suit.

thousands,<sup>20</sup> to the annual Pensacola Senior Games,<sup>21</sup> to private picnics, weddings, and family reunions.<sup>22</sup>

The parks are also available for public demonstrations and protests. Recent events include a Women’s March, a march in support of Black Lives Matter, an Earth Day Celebration, and a March for Science.<sup>23</sup> These “political and public issue events” are exempt from some permitting requirements and are subject to content-neutral time, place, and manner restrictions. *See* Dkt. 31-16 at 45-47. As is constitutionally required, Pensacola parks are also available for religious worship services. *See Niemotko v. Maryland*, 340 U.S. 268 (1951).

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<sup>20</sup> *Black Attendance Is High at Seafood Festival*, Pensacola Voice (Oct. 2, 2014), <https://tinyurl.com/ybzeuedb> (estimating Seafood Festival attendance at 90,000-100,000).

<sup>21</sup> *See Pensacola Senior Games Presented by Humana*, Pensacola Parks & Recreation, <https://tinyurl.com/y9yssa4v> (last visited Sept. 26, 2017); *2017 Competition Schedule*, Pensacola Parks & Recreation, <https://tinyurl.com/yaaqk4tc> (last visited Sept. 26, 2017).

<sup>22</sup> *See Facility Rentals*, Pensacola Parks and Recreation, <https://tinyurl.com/ydakr6ap> (last visited Sept. 26, 2017).

<sup>23</sup> *See Pensacola Women’s March Holding Event Saturday*, Pensacola News J., Jan. 18, 2017, at A14; Hana Frenette, *Black Lives Matter Walk Draws 100-plus*, Pensacola News J., July 17, 2016, at A3; *47th Annual Earth Day Celebration*, Pensacola News J., Apr. 16, 2017, at E5.

### D. Bayview Park

This case involves a challenge to a cross erected in 1941 in Bayview Park. Bayview Park was established in 1907 and encompasses 28 acres on Bayou Texar. Dkt. 30-2 ¶¶ 4, 8; *see also* Addendum 1 at 4. It includes a variety of recreational features, such as a senior center, outdoor amphitheater, two dog parks, six tennis courts, two bocce ball courts, a playground, multiple boat ramps and docks, walking trails, and picnic areas. Dkt. 30 at 5-6; Dkt. 30-2 ¶ 4. Like most Pensacola parks, it also has various memorials and plaques. The dog beach has a plaque in memory of Byron Campbell, who helped establish the beach, and his beloved dog Charley. Addendum 1 at 4. The tennis courts have a monument recognizing the establishment of the courts in 1920 (“Where Pensacola Tennis Began”) and dedicating one court to a local resident. *Id.*<sup>24</sup> The park also features a monument to Timothy Bonifay, who died in a water-skiing accident on Bayou Texar in 1979. Dkt. 30 at 6-7; Dkt. 30-2 ¶ 6. That monument is pictured below.

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<sup>24</sup> *See also Bayview Park Tennis Courts, Tennis Pensacola*, <https://tinyurl.com/yca2chga> (last visited Sept. 26, 2017).





The following map (Dkt. 30 at 5-6) shows the park and its main features, all of which the city cares for as part of the regular maintenance of the parks. Dkt. 30-2 ¶¶ 17-18.



### Map Key

1	Jogging/Walking Trail	7	Dog Beach & Memorial
2	Dog Park	8	Picnic Pavilions
3	Amphitheater	9	Pier
4	Tennis Courts and Memorial	10	Cross and Bandstand
5	Bocce Ball Courts	11	Bonifay Monument
6	Playground	12-13	Boat Ramps and Docks

Bayview Park has long served as a place for citizens to gather for holidays and other events. Shortly after it opened, the park hosted Pensacola's first Independence Day celebration in 1908. Dkt. 30-2 ¶ 8. It has hosted Memorial Day and Veterans Day events (Dkt. 30-3 ¶ 11); a candlelight vigil organized by People for Nuclear Responsibility;<sup>25</sup> Earth Day celebrations organized by Earth Ethics (Dkt. 30-2 ¶ 9); an outdoor Shakespeare play organized by the Pensacola Shakespeare Guild;<sup>26</sup> an outdoor movie night organized by the East Hill Neighborhood Association (Dkt. 31-18 at 15); a variety of religious festivals and services organized by local congregations;<sup>27</sup> a variety of fundraising walks and races; an annual children's treasure hunt as part of the Fiesta of Five Flags; weddings; a skateboard event; a dragon boat festival; a barbeque festival; and many others. Dkt. 31-18 at 14-16.

The Bayview cross originated at one of these many community events. In 1941, the local chapter of a national community service group—the

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<sup>25</sup> *Community Pulse*, Pensacola News J., Nov. 8, 1982, at 1D.

<sup>26</sup> Troy Moon, *Shakespeare in the Park*, Pensacola News J., Aug. 11, 1995, at 1B.

<sup>27</sup> *E.g.*, *What's Going On: Faith at Work*, Pensacola News J., May 25, 2001, at 2B.

Junior Chamber of Commerce, or Jaycees—chose Bayview Park to hold a “communitywide, nondenominational” event at sunrise on Easter morning. *See* Dkt. 30-7; Dkt. 31-2. With war raging across the globe and American involvement becoming more likely by the day, the Easter event was one way to allow the community to gather. It also gave members of the military a place to celebrate the holiday when they were stationed far from home. Dkt. 31-10 at 6. In preparation for this gathering, a native pine cross was erected in the northeast corner of the park. Dkt. 30-4.

The Jaycees’ Easter event became a tradition during World War II, allowing the community to gather to pray for “the divine guidance of our [nation’s] leaders” and to be reminded that “through faith” they could “see through the present dark days of war.” Dkt. 31-3 at 9; Dkt. 31-5 at 2. The Jaycees asked attendees to bring flowers “in commemoration of those who are away from home and those who have gone,” which were then distributed to patients in the Army and Navy hospitals. Dkt. 31-4 at 5.

Even before the Jaycees organized the Easter event, they already had a history of service to Pensacola. By 1941, the Jaycees had “set up markers identifying the historical points of the city,” helped build Pensacola’s first municipal golf course, and helped establish what is now Pensacola’s

municipal airport. Dkt. 30-1 at 41-42, 46. These contributions continued for nearly 90 years, until the Jaycees' Pensacola chapter dissolved in 2011. *See* Dkt. 30-2 ¶ 13.

Following the 1941 event, the Jaycees continued to sponsor community gatherings at Bayview Park. In 1945, two days after President Roosevelt died, the Jaycees organized a community-wide memorial event near the cross. Dkt. 30-7 at 5. Approximately 500 people attended. *Id.*

In 1949, the Jaycees built a small bandstand (sometimes referred to in the record as an “amphitheater”) in front of the cross and donated it to the city to be “used for the good of the general public.” Dkt. 30-1 at 50-51; Dkt. 31-8 at 2-3. The bandstand project was led by Frazier Phelps, the chairman of the Jaycees' recreation committee, who died of leukemia nine months later. *Id.* The Jaycees then rededicated the site to Phelps in 1951, placing a large plaque on the bandstand directly in front of the cross, stating that it was “Sponsored” and “Donated” by the Jaycees and “Dedicated” to Phelps:





In 1969, at the height of the Vietnam War, the Jaycees organized another Easter event and used private donations to replace the aging

wooden cross with the current version. Dkt. 30-11. That version is pictured in its context below, with the walking path used by Plaintiffs in the foreground:



The Jaycees organized annual Easter events until the dissolution of the chapter in 2011. Dkt. 30-2 ¶ 13. They also used the area around the



cross for other events, such as Veterans Day and Memorial Day events, during which flowers were collected in memory of departed soldiers. Dkt. 30-3 ¶ 11. The city never sponsored or financially supported these events, Dkt. 30-2 ¶¶ 20-22, and there is no record of any city official attending any event at the cross, Dkt. 31-18 at 16-17. The events were purely “a project of the Pensacola Jaycees.” Dkt. 30-7 at 30.

Throughout this time, Pensacola has continued to make Bayview Park available to the public on a neutral basis, regardless of whether the event is “religious or nonreligious.” Dkt. 30-2 ¶ 25. There is no record of any request for an event in Bayview Park being denied. Dkt. 31-18 at 13-14. As noted above, the cross, bandstand, and surrounding area have continued to host many community gatherings—from outdoor movie nights, to weddings, to boat festivals, to fundraising walks. *See supra* at 17. One local columnist even praised the bandstand as “great for stretches, warm ups, lunges, jumping exercises, wall push-ups and too many other things to name.” Amber Solnick, *Gonna Make You Sweat*, Pensacola News J., Aug. 13, 2015, at 9A; Dkt. 31-18 at 14-16.

For over 75 years, the park and cross have been a place where diverse Pensacolians have gathered to seek comfort in times of crisis, remember



those who served, and participate in community events. Tens of thousands of Pensacolians have used the site for these purposes over the years, and there is no record of any objection to the cross “until the Plaintiffs in this lawsuit complained.” Dkt. 30-2 ¶ 26.

### **E. The Plaintiffs**

Plaintiffs are Amanda and Andreiy Kondrat’yev, Andre Ryland, and David Suhor. *See* Dkt. 1 ¶¶ 6-16.

Amanda Kondrat’yev is an atheist; Andreiy is a “Humanist.” *Id.* ¶¶ 6, 10. The Kondrat’yevs allege that they first saw the Bayview cross in “2008 or 2009” and 2010, respectively. *Id.* ¶¶ 7, 10. They say they are “offended” by the Bayview cross, *id.* ¶ 9; which, to Andreiy, is “a religious symbol that signifies torture and violence.” *Id.* ¶ 12. Yet for six to eight years before filing suit, the Kondrat’yevs “frequently” visited Bayview Park, including the area around the cross, both for recreation and to “attend[] meetings and gatherings.” *Id.* ¶¶ 7, 9-10. After filing this lawsuit, the Kondrat’yevs moved to Canada. Dkt. 30-12 at 10; 30-17 at 21-22.

Ryland is an atheist, Dkt. 1 ¶ 13, who resides in Escambia County, Florida, outside of Pensacola. Dkt. 31-18 at 67 ¶ 1. Ryland asserts that he first saw the cross in 2010, and that he is “affronted” by it. *Id.* ¶ 3. But

for six years before filing suit, he continued to “visit Bayview Park many times throughout the year” and to bring himself into “contact” with the cross “for numerous events, including group picnics and meetings at the Senior Center.” *Id.* at 68 ¶¶ 1, 3. He also “often” encounters the cross by “walk[ing] the trail around the park.” *Id.*

Suhor first saw the cross in 1993. Dkt. 31-18 at 65 ¶ 6. He also alleges that he is “offended” by it. *Id.* ¶¶ 6, 8. Yet in the twenty-three years before filing suit, he continued to “visit Bayview Park regularly” and “encounter” the cross. *Id.* ¶ 5. He also rides his bicycle past the cross “as often as twice a week.” *Id.* ¶ 4.

Suhor has also used the Bayview cross for his own ideological purposes. In February 2016, Suhor contacted the city and “tried to reserve the site of the cross for Easter Sunday.” Dkt. 30-2 ¶ 15. A church had already reserved the site for that day, but when Suhor “complained,” “the church graciously agreed to move to another area in the park” to permit Suhor to use the cross. *Id.* Suhor then proceeded to use the cross for his “satanic purposes.” Oral Argument Tr. 43:9-17. Less than two months later, he and the other Plaintiffs filed this suit.

### III. Procedural Background

Plaintiffs filed suit on May 4, 2016, alleging that the presence of a cross on public property violates the Establishment Clause. Dkt. 1.

On April 21, 2017, Pensacola moved for summary judgment, invoking the Supreme Court's most recent Establishment Clause decisions in *Van Orden v. Perry*, 545 U.S. 677 (2005), and *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014), and arguing that Pensacola is constitutionally permitted to keep the cross as part of the city's history and culture. Dkt. 30. Plaintiffs cross-moved for summary judgment on June 22, 2016, relying on the older "*Lemon* test" from *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and arguing that Pensacola had an impermissible "religious purpose" because the cross is "patently religious." Dkt. 31 at 16.

On June 19, 2017, the district court granted summary judgment to Plaintiffs. Dkt. 41. The court acknowledged that Pensacola's actions would be "certainly constitutional" if the court considered "what the Founding Fathers intended." *Id.* at 3-6, 10. The court also acknowledged that Pensacola's actions "might well pass constitutional muster" under the Supreme Court's recent decision in *Van Orden*, which requires courts

to consider “context, history, passage of time, placement of the [monument], and overall purpose of the Establishment Clause.” *Id.* at 18.

Nevertheless, the court held that it was bound to apply the *Lemon* test, because that is what this Court did thirty-four years ago in *ACLU of Georgia v. Rabun County Chamber of Commerce, Inc.*, 698 F.2d 1098 (11th Cir. 1983). Based on *Rabun*, the court held that Pensacola had no valid secular purpose for permitting the cross, and ordered the cross removed within thirty days. Dkt. 41 at 21-23. It then stayed that order pending this appeal, Dkt. 44, which Pensacola filed on July 5, Dkt. 46.

#### **IV. Standard of Review**

Summary judgment is appropriate only if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). This Court reviews a district court’s grant of summary judgment de novo, viewing all facts in the light most favorable to the non-moving party. *Smith v. Allen*, 502 F.3d 1255, 1265 (11th Cir. 2007).

### **SUMMARY OF ARGUMENT**

I. This case should be dismissed because Plaintiffs lack standing. Three of the four Plaintiffs are not Pensacola residents. The fourth has

used the cross for his own ideological purposes. No Plaintiff made any effort to avoid the cross, and all of them encountered it for many years before filing suit, apparently without any distress.

II. Even assuming the Court reaches the merits, Pensacola's actions are consistent with the Establishment Clause. Recent Supreme Court precedent requires courts to interpret the Establishment Clause based on its historical meaning. Under that historical meaning, Pensacola's actions are fully consistent with the nation's long history of permitting religious symbols (including crosses) on government land.

Pensacola's actions are likewise constitutional under *Van Orden's* "legal judgment" approach, because the cross is just one of over 170 displays in Pensacola's parks and has stood without controversy for over 75 years. And Pensacola's actions are constitutional under the *Lemon* test, because its actions have the secular purpose and effect of preserving the city's history and culture.

## ARGUMENT

### I. Plaintiffs lack standing.

The decision below should be reversed because all four plaintiffs lack standing. The elements of standing “are not mere pleading requirements.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). They are “an indispensable part of the plaintiff’s case” that must be supported with “the manner and degree of evidence required at the successive stages of the litigation.” *Id.* This means that, on summary judgment, “the plaintiff can no longer rest on ‘mere allegations,’” but “must ‘set forth by affidavit or other evidence specific facts’” demonstrating standing. *Bischoff v. Osceola County*, 222 F.3d 874, 878 (11th Cir. 2000) (quoting *Lujan*, 504 U.S. at 561).

Plaintiffs failed to do so here. Two plaintiffs submitted no evidence of standing and have since left the country. The third plaintiff lives outside Pensacola and has put forward no evidence of injury. And the last Plaintiff not only failed to put forward evidence of an injury but negated any claim of injury by reserving the cross and using it for his own ideological purposes.

**A. The Kondrat'yevs lack standing.**

The Kondrat'yevs provided no declarations, testimony, or any other evidence of purported injuries. “Without the requisite specifics, this court would be speculating upon the facts”—“something [it] cannot do, particularly in the standing context, where the facts must be proven, not merely asserted or inferred.” *Doe v. Tangipahoa Par. Sch. Bd.*, 494 F.3d 494, 499 (5th Cir. 2007) (*en banc*).

The record also shows that the Kondrat'yevs left the United States in 2016 and resettled in Canada—meaning that they will have no further contact with the cross. Dkt. 30-12 at 2, 30-17 at 21-22.

**B. Ryland lacks standing.**

Plaintiff Ryland offered an affidavit admitting that he does not live in Pensacola. Dkt. 31-18 at 67. He states only that he is “offended and feel[s] excluded” by seeing the cross. Dkt. 31-18 at 68. But it is well established that a plaintiff cannot base standing on “the psychological consequence . . . produced by observation of conduct with which one disagrees.” *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 485 (1982). Instead, “[f]or Establishment Clause

claims based on non-economic harm, the plaintiffs must identify a ‘personal injury suffered by them . . . *other than*’ mere offense. *Glassroth v. Moore*, 335 F.3d 1282, 1292 (11th Cir. 2003) (quoting *Valley Forge*, 454 U.S. 464 at 485) (emphasis added and omitted). In display cases, that means that plaintiffs must show they have been “forced to assume special burdens” to avoid the offensive display. *Id.* (quoting *Rabun*, 698 F.2d at 1107).

Here, Ryland has not even tried to avoid the cross, much less borne any burden. Six years after encountering the cross, he continues to “visit Bayview Park many times throughout the year” and “walk the trail around the park” where he encounters the cross. Dkt. 31-18 at 68. His only claimed injury is that he “feel[s]” “offended” and “excluded” when he sees it. *Id.* But that is merely a “psychological consequence” insufficient to confer standing. *Valley Forge*, 454 U.S. at 485-86; *see also Freedom From Religion Found., Inc. v. Obama*, 641 F.3d 803, 806-07 (7th Cir. 2011) (“[H]urt feelings differ from legal injury.”).

Ryland contrasts sharply with the plaintiffs this Court found to have standing in *Glassroth* and *Rabun*. In *Glassroth*, the plaintiffs with standing were “attorneys whose professional duties require[d] them to enter



the [courthouse] regularly, and” thus “pass by the [challenged] monument.” 335 F.3d at 1292. They had assumed special burdens to avoid doing so, “alter[ing] their behavior” and “incurr[ing] expenses” such as purchasing law books and hiring messengers to avoid visiting the courthouse. *Id.* Similarly, in *Rabun*, the plaintiffs with standing were campers who “testified unequivocally that they would not camp in the park because of the presence of the cross.” *Rabun*, 698 F.2d at 1102-04 & 1108 n.18. Here, by contrast, Ryland testified that instead of avoiding the cross, he continues to use the park regularly. *See* Dkt. 31-18 at 68.

Nor is this a case where avoiding a religious display would prevent Plaintiffs from communicating with their local governments or “participat[ing] in local governmental affairs.” *Bats v. Cobb County*, 495 F. Supp. 2d 1311, 1316-17 (N.D. Ga. 2007) (emphasis omitted), *aff’d sub nom. Pelphrey v. Cobb County*, 547 F.3d 1263 (11th Cir. 2008). In *Pelphrey*, for example, the plaintiffs encountered prayers at county commission meetings. 547 F.3d at 1279. In *Saladin v. City of Milledgeville*, the plaintiffs had standing because they were “forced to look at the word Christianity” whenever they received correspondence from their city government. 812 F.3d 687, 692 (11th Cir. 1987); *see also Glassroth*, 335 F.3d at 1285 (Ten

Commandments monument placed where “[n]o one who enters the [court-house] through the main entrance c[ould] miss [it]”).

Here, by contrast, Ryland is not even a Pensacola resident, and he does not claim that he must encounter the cross to participate in government affairs. Nor could he: the cross is located not in a courthouse (*Glassroth*), legislative meeting room (*Pelphrey*), or on his utility bills (*Saladin*), but in “a remote corner of” one of Pensacola’s 93 public parks. Dkt. 41 at 1. Although he could easily avoid it, Ryland has “not altered [his] conduct one whit or incurred any cost in time or money” to avoid the cross. *Obama*, 641 F.3d at 807-08. Instead, he has voluntarily visited it. This kind of self-inflicted “offense” does not confer standing. *See ACLU-NJ v. Township. of Wall*, 246 F.3d 258, 266 (3d Cir. 2001) (Alito, J.) (no standing when the plaintiff encountered an offensive display voluntarily rather than “in the course of satisfying a civic obligation at the municipal building”); *Valley Forge*, 454 U.S. at 487 (standing doctrine does not permit plaintiffs “to roam the country in search of governmental wrongdoing”).

### **C. Suhor lacks standing.**

For similar reasons, Plaintiff Suhor lacks standing. Like Ryland,

Suhor has assumed no burden to avoid the cross. Instead, seventeen years after first seeing it, he testifies that he still “visit[s] Bayview Park regularly” and sees the cross “on regular bike rides, as often as twice a week.” Dkt. 31-18 at 65. Thus, while this Court’s standing inquiry turns on whether the plaintiff has “assume[d] special burdens,” *Glassroth*, 335 F.3d at 1292, Suhor has not even changed his bike route.

Suhor has also gone out of his way to use the cross for his own ideological purposes. Just months before filing this lawsuit, Suhor “tried to reserve the site of the cross for Easter Sunday.” Dkt. 30-2 ¶ 15. When he was told that a church had already reserved the site, he “complained,” and “the church graciously agreed to move to another area in the park.” *Id.* Suhor then used the cross for his “satanic purposes.” Oral Argument Tr. 43:9-17. Suhor cannot claim an injury from a display he intentionally uses.

Finally, Suhor may attempt to claim taxpayer standing. But again, by reserving the cross and using it for his own ideological purpose, Suhor has shown that the display causes him no injury. Absent “municipal action contributing to [a] claimed injury,” there is no taxpayer standing.

See, e.g., *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 349 (2006).<sup>28</sup>

## II. Pensacola’s actions are constitutional.

Even assuming Plaintiffs had standing, the city’s actions are consistent with the Establishment Clause.

The Supreme Court has interpreted the Establishment Clause over time using a variety of methods. The earliest cases held that the Establishment Clause must be interpreted “in the light of its history.” *Everson v. Bd. of Educ.*, 330 U.S. 1, 14 (1947). In the 1970s and 1980s, the Court applied the three-part “*Lemon* test.” *Lemon v. Kurtzman*, 403 U.S. 602 (1971). More recent cases have rejected the *Lemon* test, stating that it is

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<sup>28</sup> Even assuming the existence of taxpayer standing, any “remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.” *DaimlerChrysler*, 547 U.S. at 353 (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)). In other words, in the case of taxpayer standing, the proper remedy is not an order removing a display, but an order “enjoining [the] illegal expenditure.” *D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 5 (D.C. Cir. 1988); see also *Hinrichs v. Bosma*, 440 F.3d 393, 397-98 (7th Cir. 2006) (a municipal taxpayer’s injury “is redressed . . . by ending the unconstitutional spending practice”). Here, there are no regular expenditures to maintain the cross; it “just exists” there. *Gonzales v. North Township of Lake County*, 4 F.3d 1412, 1416 (7th Cir. 1993); see also *Rabun*, 698 F.2d at 1106 n.14 (suggesting that taxpayer standing was unavailable because “[n]o expenditures ha[d] been made . . . in connection with the cross except for the costs incurred in maintaining the park itself”). So any relief would be limited to an injunction against special expenditures to improve the cross, such as by washing or repainting it.

“not useful in dealing with [a] passive monument,” *Van Orden*, 545 U.S. at 686 (plurality), and that there is “no test-related substitute for the exercise of legal judgment.” *Id.* at 700 (Breyer, J., concurring). And the Court’s most recent case returned full circle to the historical approach, stating that that “the Establishment Clause *must* be interpreted by reference to historical practices and understandings.” *Town of Greece*, 134 S. Ct. at 1819 (emphasis added) (quoting *County of Allegheny*, 492 U.S. at 670).

Here, the district court considered several of these methods, but ultimately chose the wrong one and reached the wrong result. It first acknowledged that the city’s actions would be constitutional under a historical approach—because “the historical record indicates that the Founding Fathers did not intend for the Establishment Clause to ban crosses and religious symbols from public property.” Dkt. 41 at 6. It also acknowledged that the city’s actions “might well pass constitutional muster” under the “legal judgment” approach in *Van Orden*—because the “context, history, passage of time, [and] placement of the cross” are consistent with the “overall purpose of the Establishment Clause.” *Id.* at 18.

But it ultimately chose to apply the “widely criticized (and sometimes savaged)” *Lemon* test, and struck down the city’s actions. *Id.* at 7.

This was doubly mistaken. First, the *Lemon* test is not controlling. Second, even assuming *Lemon* applies, the city’s actions are constitutional.

**A. This case is controlled by *Van Orden* and *Town of Greece*, not *Lemon*.**

The district court’s first mistake was to conclude that the *Lemon* test is controlling. As explained below, both the Supreme Court and this Court have declined to apply the *Lemon* test in their most recent Establishment Clause decisions. Those decisions are binding on this Court.

**1. The Supreme Court has abandoned the *Lemon* test.**

The Supreme Court first incorporated the Establishment Clause against the states in 1947—six years after creation of the monument here. *Everson*, 330 U.S. at 1. The Court did not apply the *Lemon* test in *Everson*, because it had not been invented yet. Instead, both the majority and dissent examined the history of the Establishment Clause. The majority said that the Establishment Clause must be interpreted “in the light of its history,” 330 U.S. at 14, and the dissent agreed that “[n]o provision of the Constitution is more closely tied to or given content by its

generating history than the religious clause of the First Amendment.” *Id.* at 33 (Rutledge, J., dissenting). This historical approach controlled the first 24 years of the Supreme Court’s Establishment Clause jurisprudence, as the Court repeatedly based its decisions on the history of the practices in dispute. *See, e.g., McGowan v. Maryland*, 366 U.S. 420, 437 (1961) (“Before turning to the [Sunday Closing Law] now here under attack, an investigation of what historical position Sunday Closing Laws have occupied with reference to the First Amendment should be undertaken.”) (citing *Everson*, 330 U.S. at 14); *Walz v. Tax Comm’n*, 397 U.S. 664, 680 (1970) (upholding church tax exemptions because they were supported by “more than a century of our history and uninterrupted practice”).

The Court departed from this historical approach in *Lemon v. Kurtzman*, which involved government funding for religious schools. 403 U.S. 602 (1971). Noting that “we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law,” the Court said that “[e]very analysis in this area must begin with consideration of the cumulative criteria developed by the Court.” *Id.* at 612. Then, citing just two cases decided in the previous three years, the Court

“gleaned” the now-familiar *Lemon* test—which prohibits any government action that has a predominantly religious purpose, has the primary effect of advancing (or, as later cases said, “endorsing”) religion,<sup>29</sup> or excessively entangles the government in religion. 403 U.S. at 612 (citing *Board of Educ. v. Allen*, 392 U.S. 236, 243 (1968); *Walz*, 397 U.S. at 668).

The *Lemon* test has been one of the most harshly criticized doctrines in all of constitutional law. Scholars have criticized it as a “mess”<sup>30</sup> and “a conceptual disaster.”<sup>31</sup> Lower courts have criticized it as “hopelessly open-ended.”<sup>32</sup> At least ten recent Supreme Court Justices have criticized it, including five *current* Justices.<sup>33</sup> One of its most forceful critics has

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<sup>29</sup> See *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 282-83 (3d Cir. 2011) (noting that “[t]he endorsement test and the second *Lemon* prong are essentially the same”).

<sup>30</sup> Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. Chi. L. Rev. 115, 119-21, 130 (1992).

<sup>31</sup> Jesse H. Choper, *The Establishment Clause and Aid to Parochial Schools—An Update*, 75 Cal. L. Rev. 5, 6 (1987).

<sup>32</sup> See, e.g., *Doe ex rel. Doe v. Elmbrook Sch. Dist.*, 687 F.3d 840, 869 (7th Cir. 2012) (Easterbrook, J., dissenting).

<sup>33</sup> See *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398-400 (1993) (Scalia, J., concurring) (collecting criticism from Scalia, Thomas, Kennedy, O’Connor, White, JJ., and Rehnquist, C.J); *Committee for Pub. Educ. & Religious Liberty v. Regan*, 444 U.S. 646, 671 (1980) (Stevens, J., dissenting); see also *Utah Highway Patrol Ass’n v. American Atheists, Inc.*, 565 U.S. 994 (2011) (Thomas, J., dissenting from denial of



been Justice Kennedy, who has argued for many years that the *Lemon* test is “flawed in its fundamentals and unworkable in practice”—and that “the meaning of the [Establishment] Clause [should instead] be determined by reference to historical practices and understandings.” *County of Allegheny*, 492 U.S. at 670.

After years of criticism, the Supreme Court has finally moved away from the *Lemon* test. In the last 16 years, it has applied the *Lemon* test only once—over 12 years ago—in a case involving a Ten Commandments display. *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 864-66 (2005). By contrast, over the same 16-year time period, the Court has decided *six* Establishment Clause cases that either ignored the *Lemon* test or expressly declined to apply it.<sup>34</sup>

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certiorari) (collecting criticism by Kennedy, Alito, Thomas, and Scalia, JJ., and Roberts, C.J.); *Green v. Haskell Cty. Bd. of Comm’rs*, 574 F.3d 1235, 1245 (10th Cir. 2009) (Gorsuch, J., dissenting from denial of rehearing *en banc*) (noting that continuing to apply *Lemon* “leave[s] the state of the law ‘in Establishment Clause purgatory.’”) (citation omitted).

<sup>34</sup> See:

- *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001) (not applying *Lemon*);
- *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (same);

Indeed, on the same day it decided *McCreary*, a majority of the Court expressly declined to apply the *Lemon* test to another Ten Commandments display. There, a four-Justice plurality said that the *Lemon* test was “not useful in dealing with the sort of passive monument” at issue, and that the analysis must instead be “driven both by the nature of the monument and by our Nation’s history.” *Van Orden*, 545 U.S. at 686. Justice Breyer, in a controlling concurrence, also declined to apply the *Lemon* test, stating that there is “no test-related substitute for the exercise of legal judgment.” *Id.* at 700.

After *Van Orden*, one of the last remaining proponents of the *Lemon* test retired (Justice O’Connor) and was replaced by a critic of the *Lemon* test (Justice Alito). Since then, the Court has taken two decisive steps away from it. First, in *Salazar v. Buono*, the Court considered an Establishment Clause challenge to a statute that transferred federal land to a

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- *Cutter v. Wilkinson*, 544 U.S. 709, 727 (2005) (Thomas, J., concurring) (“The Court properly declines to assess [the statute] under the discredited test of *Lemon*.”);
  - *Van Orden v. Perry*, 545 U.S. 677, 686 (2005) (plurality) (not applying *Lemon*); *id.* at 698-99 (Breyer, J., concurring) (same);
  - *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012) (same);
  - *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014) (same).

private party in order to preserve a memorial in the shape of a Latin cross. 559 U.S. 700 (2010). A majority of the Court held that the lower court was wrong to enjoin the statute under the Establishment Clause, but for different reasons.

Justice Kennedy, joined by Chief Justice Roberts and Justice Alito, sidestepped the merits of the Establishment Clause question, but went out of his way to repeat his criticism of “the so-called *Lemon* test”—favorably citing his own criticism of it, and suggesting that it is no longer “the appropriate [test]” to apply. *Id.* at 708, 720-21 (citing *County of Allegheny*, 492 U.S. at 668; *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 763-68 (1995)); *id.* at 728 (Alito, J., concurring) (questioning whether “it is appropriate to apply the so-called ‘endorsement test’”). Justices Scalia and Thomas did not reach the merits because they concluded that the plaintiffs lacked standing; but they gave no indication that they had abandoned their longstanding criticism of *Lemon*. *Id.* at 729. Only a three-Justice dissent advocated for applying the *Lemon* test. *Id.* at 742 (Stevens, J., joined by Ginsburg, J., and Sotomayor, J., dissenting).

Second, in *Town of Greece*, which involved a challenge to a town’s practice of legislative prayer, a majority of the Court made a clean break with

*Lemon*. The Second Circuit had struck down the town’s prayers under the *Lemon* test. 134 S. Ct. at 1818. But the Supreme Court reversed and refused to apply *Lemon*. Instead, in an opinion by Justice Kennedy, the Court said that “[a]ny test the Court adopts must acknowledge a practice that was accepted by the Framers.” *Id.* at 1819. Citing his own famous criticism of the *Lemon* test, Justice Kennedy held that “the Establishment Clause *must* be interpreted ‘by reference to historical practices and understandings.’” *Id.* at 1819 (quoting *County of Allegheny*, 492 U.S. at 670).

## **2. This Court and other circuits have abandoned the *Lemon* test.**

Following the Supreme Court’s lead, this Court has recognized that *Lemon* is no longer controlling. Since *Van Orden*, this Court has issued only two published decisions addressing the merits of an Establishment Clause claim; both recognized that *Lemon* is not controlling.

First, in *Pelphrey v. Cobb County*, this Court upheld a county’s practice of legislative prayer. 547 F.3d 1263 (11th Cir. 2008). Although the dissent argued that “[*Lemon*] governs modern Establishment Clause jurisprudence,” *id.* at 1282 (Middlebrooks, J., dissenting), this Court held that “the Supreme Court has rejected this reasoning,” *id.* at 1276. Quoting

*Van Orden*, the Court emphasized that “[m]any of [the Supreme Court’s] recent decisions simply have not applied the *Lemon* test.” *Id.* Instead, “the Supreme Court [has] considered *historical practice* to resolve a case under the Establishment Clause.” *Id.* at 1277 (emphasis added).

Second, in *Atheists of Florida, Inc. v. City of Lakeland*, this Court again upheld a local government’s practice of legislative prayer. 713 F.3d 577 (11th Cir. 2013). Again, the plaintiffs argued that the Court was obligated “to apply the test set forth by the Supreme Court in *Lemon*.” *Id.* at 589-90. And again, this Court disagreed, stating that it would instead follow *Pelphrey*. *Id.* at 591-93.

Other circuits have likewise abandoned *Lemon*. In *Myers v. Loudoun County Public Schools*, the Fourth Circuit considered a challenge to the recitation in public schools of the phrase “under God” in the Pledge of Allegiance. 418 F.3d 395, 399 (4th Cir. 2005). Although the district court had applied “the three part test of *Lemon*,” the Fourth Circuit refused to. *Id.* at 397. Instead, it applied the “legal judgment” approach from *Van Orden* and said that “[t]he history of our nation . . . guides our exercise of that legal judgment in this case.” *Id.* at 402.

Similarly, in *ACLU Nebraska Foundation v. City of Plattsmouth*, the Eighth Circuit considered a challenge to a Ten Commandments monument in a city park. 419 F.3d 772 (8th Cir. 2005). Although the district court had struck down the monument under the *Lemon* test, *id.* at 775, the *en banc* Eighth Circuit reversed, holding that, in the wake of *Van Orden*, “we do not apply the *Lemon* test,” *id.* at 778 n.8. Instead, “[t]he Supreme Court’s decision in *Van Orden* governs our resolution of this case”—which required the court to consider the “unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789.” *Id.* at 776, 778.<sup>35</sup>

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<sup>35</sup> Other circuits have expressed confusion or division since *Van Orden*. The Ninth Circuit has held that *Van Orden* “carv[es] out an exception” from *Lemon*, but “[w]e cannot say how narrow or broad the ‘exception’ may ultimately be.” *Card v. City of Everett*, 520 F.3d 1009, 1018 (9th Cir. 2008). The Tenth Circuit, by a 6-6 vote, declined to reconsider *en banc* a cursory decision that *Lemon* still applies. *Green v. Haskell Cty. Bd. of Comm’rs*, 574 F.3d 1235, 1245 (10th Cir. 2009) (Gorsuch, J., dissenting). The Sixth Circuit held that it “remain[s] in Establishment Clause purgatory” and “must continue to [apply *Lemon*],” despite the fact that “Justice Breyer’s concurrence [in *Van Orden*] arguably provided a fifth vote as to *Lemon*’s inapplicability.” *ACLU of Ky. v. Mercer County*, 432 F.3d 624, 636 (6th Cir. 2005).

Notably, all of these decisions rejecting the *Lemon* test, including this Court's, came *before* the Supreme Court's decision in *Town of Greece*. *Town of Greece* only confirms that *Lemon* no longer controls.

**3. The district court erred by applying the *Lemon* test.**

The district court applied the *Lemon* test without considering any of this. Dkt. 41 at 10. It never mentioned the Supreme Court's decision in *Town of Greece*, which rejected the *Lemon* test. It never mentioned this Court's decisions in *Pelphrey* or *Atheists of Florida*, both of which rejected *Lemon*. And it never mentioned the Fourth or Eighth Circuit's decisions in *Myers* or *ACLU Nebraska Foundation*, both of which rejected *Lemon*.

Instead, it said that *Lemon* was controlling because this Court applied it in *American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc.*, 698 F.2d 1098, 1110-11 (11th Cir. 1983)—over 35 years ago. Dkt. 41 at 20. The district court offered four arguments for doing so, none of which have merit.

First, the district court said that *Van Orden* could not have undermined the *Lemon* test, because “on the same day that *Van Orden* was issued, the Supreme Court decided *McCreary*,” which “applied *Lemon*.” Dkt. 41 at 15. But this argument ignores the Supreme Court's subsequent

decisions in *Buono* and *Town of Greece*, both of which rejected *Lemon*. It also ignores this Court’s decision in *Pelphrey*, which specifically rejected the argument that *Lemon* is controlling in light of *McCreary*. 547 F.3d at 1275-77; *id.* at 1282 (Middlebrooks, J., dissenting) (citing *McCreary*).

Second, the district court said that the historical approach in “the *Van Orden* plurality” does not apply to “*all* religious monuments”; it applies only to “the ‘sort’ of monument in that case”—namely, monuments that have “dual” “religious” and “historical” significance. Dkt. 41 at 15-16. But nothing in the plurality suggests that it was advocating for two different legal standards—a historical approach for “dual significance” monuments, and the *Lemon* test for “exclusively religious symbol[s].” *Id.* Indeed, the vociferous critics of *Lemon* never would have joined the opinion if it had. Instead, the point of the *Van Orden* plurality was that, regardless of where *Lemon* might fit “in the larger scheme of Establishment Clause jurisprudence”—such as in funding cases where it originated—it is certainly “not useful” in evaluating a “passive monument.” 545 U.S. at 686.



Third, the district court acknowledged that Justice Breyer’s controlling concurrence in *Van Orden* applied the “legal judgment” approach “instead of the *Lemon* test”; but according to the district court, Justice Breyer advocated for applying the legal judgment approach only in “difficult borderline cases” involving monuments with “*dual significance*.” Dkt. 41 at 17-18. But again, nothing in Justice Breyer’s opinion suggests that he wanted to apply two different tests—a “legal judgment” approach in “borderline” cases, and the *Lemon* test in easy cases. To the contrary, he said that the Court should *not* decide Establishment Clause cases based on “mechanical formula[s],” but should instead exercise “legal judgment” based on “the underlying purposes of the [Religion] Clauses.” *Id.* at 699-700.

Even assuming Justice Breyer had proposed two different tests, the district court was wrong to conclude that a cross is an “exclusively religious symbol.” Dkt. 41 at 16. Indeed, the plurality in *Buono*—which also involved a Latin cross—said just the opposite. 559 U.S. at 700. “Although certainly a Christian symbol,” the cross was also “intended simply to honor our Nation’s fallen soldiers.” *Id.* at 715. Over time, “the cross and

the cause it commemorated had become entwined in the public consciousness”—so that the cross had a “complex meaning beyond the expression of religious views,” including a “historical meaning.” *Id.* at 716-17; *id.* at 721 (“[A] Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect” “heroic acts, noble contributions, and patient striving” and therefore “evokes far more than religion.”). The plurality also said that a cross can be viewed as a permissible “public acknowledgment of religion’s role in society.” *Id.* at 719. Thus, the district court’s assertion—that crosses have only religious significance—conflicts with *Buono*, which the district court did not cite.

Lastly, the district court argued that this Court would be “bound to follow” *Rabun* and apply the *Lemon* test, because *Rabun* has not been “overruled en banc” and is not “clearly inconsistent” with *Van Orden*. Dkt. 41 at 20. But this argument is mistaken at several levels. First, it has already been rejected by this Court in *Pelphrey*. There, the Court rejected the argument that *Lemon* still “governs modern Establishment Clause jurisprudence,” 547 F.3d at 1282 (Middlebrooks, J., dissenting), and instead followed *Van Orden*. Far from limiting *Van Orden* to a made-up class of “Ten Commandment” cases—as the district court did here

(Dkt. 41 at 20)—this Court treated *Van Orden* as relevant in all Establishment Clause cases.

Second, this Court has repeatedly held that its “prior precedent is no longer binding once it has been substantially undermined or overruled by . . . Supreme Court jurisprudence.” *United States v. Gallo*, 195 F.3d 1278, 1284 (11th Cir. 1999) (collecting cases); *see also United States v. Madden* 733 F.3d 1314, 1319-20 (11th Cir. 2013) (declining to follow precedent “decided long before” Supreme Court cases that “at the very least, substantially undermined” it); *United States v. DiFalco*, 837 F.3d 1207, 1216 (11th Cir. 2016) (same) That is what has occurred here: *Rabun* applied the *Lemon* test; but the Supreme Court rejected that test in *Van Orden* and *Town of Greece*. Thus, “[a]fter *Town of Greece*,” *Rabun* “misstates the law.” *Elmbrook Sch. Dist. v. Doe*, 134 S. Ct. 2283, 2284 (2014) (Thomas, J., dissenting from denial of certiorari).

Finally, even assuming *Rabun* is still good law, it is distinguishable. *Rabun* involved a brand-new cross touted with government approval as “a symbol of Christianity.” 698 F.2d at 1101. Its stated purpose was “promoting tourism”—*i.e.*, attracting people to see and use the cross. *Id.* at 1109. The cross stood on an 85-foot-tall structure that was “visible for

several miles from the major highways.” *Id.* at 1101. And the cross was not part of any broader effort to commemorate the area’s history and culture.

Here, the cross is 76 years old. It was erected at a private gathering during a time of national crisis and has deep historic meaning. It is tucked in the corner of a park with a large plaque saying it was “Sponsored” by, “Donated” by, and “Dedicated” to a private nonreligious group. And it is one of over 170 displays commemorating Pensacola’s history and culture. As this Court has recognized, there is a “difference between following a precedent and extending a precedent.” *Jefferson County v. Acker*, 210 F.3d 1317, 1320 (11th Cir. 2000). Given the differences in these two cases, the Court is “not obligated to extend [*Rabun*] by even a micron,” but is instead “free to apply the reasoning in later Supreme Court decisions.” *Id.* at 1320.

**B. Pensacola’s actions are constitutional under the historical approach in *Van Orden* and *Town of Greece*.**

The Supreme Court’s most recent decisions interpreting the Establishment Clause are *Van Orden* and *Town of Greece*. Both adopt a historical approach, under which even the district court acknowledged the cross is “certainly constitutional.” Dkt. 41 at 10.

In *Van Orden*, the plurality said that the Court’s analysis of a “passive monument” must be “driven both by the nature of the monument and by our Nation’s history.” 545 U.S. at 686. To conduct this analysis, the plurality considered the nation’s “unbroken history of official acknowledgment by all three branches of government of the role of religion in American life.” *Id.* at 686. It then noted that it had upheld legislative prayer and Sunday closing laws because those practices were “deeply embedded in the history and tradition of this country.” *Id.* at 688 (quoting *Marsh v. Chambers*, 463 U.S. 783, 786 (1983)). Similarly, it noted that “acknowledgments of the role played by the Ten Commandments in our Nation’s heritage are common throughout America.” *Id.* at 688-89. Thus, although the monument obviously had “religious significance,” the plurality upheld it, noting that “[s]imply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause.” *Id.* at 690.

The Court built upon this historical approach—and adopted it in the majority opinion—in *Town of Greece*. There, the Court first emphasized that relying on “history” is not “an exception to the Court’s Establishment

Clause jurisprudence.” 134 S. Ct. at 1818 (quotation and citation omitted). Instead, it is the norm: “Any test the Court adopts must acknowledge a practice that was accepted by the Framers,” and “the Establishment Clause *must* be interpreted by reference to historical practices and understandings.” *Id.* at 1819 (emphasis added; quotation and citation omitted).

Rather than applying the *Lemon* test, the Court said that “[our] inquiry . . . must be to determine whether the prayer practice . . . fits within the tradition long followed in Congress and the state legislatures.” *Id.* at 1819. To do this, the Court considered “our history and tradition” of legislative prayer, including prayers “[f]rom the earliest days of the Nation,” and prayers in Congress today. *Id.* at 1820-21, 1823. It ultimately upheld the prayers because they “comport[] with our tradition.” *Id.* at 1828.

Under *Van Orden* and *Town of Greece*, the question in this case is the same: “whether the [City’s conduct] fits within the tradition long followed” in our nation’s history. *Id.* at 1819. And the answer here is also the same: The city’s actions fit easily with the “unbroken history of official acknowledgment by all three branches of government of the role of

religion in American life.” *Van Orden*, 545 U.S. at 686. Indeed, even the district court acknowledged this fact, noting that the founders “would have most likely found this lawsuit absurd.” Dkt. 41 at 6.

Acknowledgments of religion were common at the founding. As noted in *Van Orden*, President Washington’s 1789 Thanksgiving Day Proclamation recommended “a day of public thanksgiving and prayer” for the “Supreme Being[s]” role in “the foundations and successes of our young Nation.” 545 U.S. at 686-87. And as the Court explained in *Town of Greece*, the same First Congress that approved the Establishment Clause “provided for the appointment of chaplains” to open its sessions with often “decidedly Christian” prayer. 134 S. Ct. at 1819-21. Likewise, every state constitution at the founding referenced “God” or an equivalent term.<sup>36</sup> And the Nation’s official seal, adopted in 1782, features “the Eye of Providence” surrounded by “Glory” above the motto *Annuit Coeptis*—“He [God] has favored our undertakings.”<sup>37</sup>

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<sup>36</sup> Aleksandra Sandstrom, *God or the Divine is Referenced in Every State Constitution*, Pew Research Center (Aug. 17, 2017), <http://tinyurl.com/yclev7o4>.

<sup>37</sup> *The Great Seal of the United States*, U.S. Dep’t of State Bureau of Pub. Affairs 4-6 (July 2003), <http://tinyurl.com/ycca6rgs>.

These early acknowledgments of religion were not limited to words (like prayers) or symbols (like the seal), but also included monuments. The “first federal monument,” installed in 1808, noted the deaths of American sailors in “the year of our Lord, 1804.” *Van Orden*, 545 U.S. at 689 n.9. Within decades of the founding, chapels were built on federal land, including the Old Cadet Chapel at West Point (1836)<sup>38</sup> and the Chapel of the Centurion inside Fort Monroe (1858).<sup>39</sup> The galleries of the Library of Congress include statues of St. Paul and Moses (1897). *Van Orden*, 545 U.S. at 689 & n.9. And one of the earliest monuments in the nation’s capital—the Washington Monument (begun in 1848)—has inscribed in Latin at its apex “Praise be to God.” *Id.*

This tradition of public displays with religious content extends to crosses. Crosses were planted in American soil by the first explorers—a fact illustrated by a sculpture (completed in 1863) on the doors of the U.S.

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<sup>38</sup> *Old Cadet Chapel*, U.S. Military Acad. West Point, <https://tinyurl.com/yahugoex> (last visited Sept. 26, 2017).

<sup>39</sup> *Chapel of the Centurion*, Order of Centurions, <https://tinyurl.com/y9zr89hn> (last visited Sept. 26, 2017).



Capitol showing Columbus's crew carrying a cross,<sup>40</sup> and by a painting in the Capitol's Rotunda (placed in 1855) showing De Soto's crew erecting a crucifix on the Mississippi.<sup>41</sup> In the eighteenth and nineteenth centuries large crosses were erected (and still stand) in what is now Grant Park in California in 1782 and Cross Mountain Park in Texas in 1849. Addendum 2 at 1, 3. After the Civil War—at the time Congress incorporated the First Amendment against the states—crosses commemorating veterans were erected on public land in Fayetteville, North Carolina (1868); Perry County, Ohio (1876); and Gettysburg, Pennsylvania (1888). *Id.* at 4-6. And in 1890, the Naval Academy commissioned a monument of a cross to memorialize officers who died exploring the Arctic. *Id.* at 7.

Today, crosses appear on government property across the country—from the Father Serra Cross in Monterey, California (erected 1908); to the Wayside Cross in New Canaan, Connecticut (erected 1923); to the Kauhako Crater Cross in Kalaupapa National Historical Park in Hawaii (erected 1947). *Id.* at 9, 12, 22. Outside the D.C. Circuit Courthouse

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<sup>40</sup> *The Columbus Doors*, Architect of the Capitol, <https://tinyurl.com/yafhc9mq> (last updated May 17, 2016).

<sup>41</sup> *Discovery of the Mississippi by De Soto*, Architect of the Capitol, <https://tinyurl.com/ycj9qe2t> (last updated Apr. 29, 2016).

stands “a 24-foot-tall sculpture, depicting, among other things, the Ten Commandments and a cross.” *Van Orden*, 545 U.S. at 689. Arlington National Cemetery has the famous Argonne (1923) and Canadian (1927) Crosses. Addendum 2 at 13, 16. And several crosses stand on public property in this Circuit, including the Rustic Cross in Augusta, Georgia (1929); Celtic crosses in Brunswick (1933) and Savannah (1984); and the Pensacola Beach Cross (1959). *Id.* at 18, 20, 28, 32. This is just a small sampling. A fuller listing of crosses on public land is included as Addendum 2.

The Bayview cross falls well within this tradition. Like the monument in *Van Orden* and the monuments listed above, it has “historical meaning.” 545 U.S. at 690. It unified the community in 1941 at a time of intense national crisis. And over 76 years, it has been the site of numerous historic and community events—from a memorial ceremony for President Roosevelt, to Veterans Day celebrations, to Memorial Day observances. For the Pensacola community, it is obviously a reflection of “the role of religion in American life.” *Id.* at 686. Like the cross upheld in *Buono*, it is also “a symbol . . . used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in

history for this Nation and its people.” 559 U.S. at 721. Finally, the monument is just one of over 170 displays throughout Pensacola’s parks, all of which help communicate the many “strands” of Pensacola’s “history.” *Van Orden*, 545 U.S. at 691-92. Thus, like government actions in *Van Orden* and *Town of Greece*, Pensacola’s conduct “fits within the tradition” of our nation’s history. 134 S. Ct. at 1819.<sup>42</sup>

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<sup>42</sup> This longstanding tradition is also consistent with the original meaning of the Establishment Clause. See *Felix v. City of Bloomfield*, 847 F.3d 1214, 1216 (10th Cir. 2017) (Kelly, J., dissenting from denial of rehearing *en banc*) (noting that established churches at the founding shared several common features: “(1) [state] control over doctrine, governance, and personnel of the church; (2) compulsory church attendance; (3) [state] financial support; (4) prohibitions on worship in dissenting churches; (5) use of church institutions for public functions; and (6) restriction of political participation to members of the established church.”) (quoting Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2131 (2003)), *petition for cert. filed*, — S. Ct. — (June 6, 2017) (No. 17-60); see also *Town of Greece*, 134 S. Ct. at 1837 (Thomas, J., concurring) (colonial establishments “exercised government power in order to exact financial support of the church, compel religious observance, or control religious doctrine.”) (citing McConnell).

**C. Pensacola’s actions are constitutional under the “legal judgment” approach in *Van Orden*.**

Pensacola’s actions are also consistent with Justice Breyer’s *Van Orden* concurrence.<sup>43</sup> According to Justice Breyer, “no single mechanical formula . . . can accurately draw the constitutional line in every [Establishment Clause] case.” 545 U.S. at 699. Instead, the Court must exercise its “legal judgment” in light of “the underlying purposes of the [Religion] Clauses.” *Id.* at 700. Justice Breyer based his legal judgment in *Van Orden* on three primary considerations: (1) “the text of the [display],” (2) “the context of the display,” and (3) the passage of time before any litigation. *Id.* at 700-02. All three considerations support Pensacola here.

**Text.** In *Van Orden*, Justice Breyer acknowledged that the text of the Ten Commandments monument “undeniably has a religious message.” *Id.* at 700. It consisted of the Protestant King James version of the Commandments, beginning with “I AM the LORD thy God. Thou shalt have no other gods before me.” *Id.* at 707-08 (Stevens, J., dissenting). Given

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<sup>43</sup> That opinion was controlling in *Van Orden*. See *Staley v. Harris County*, 485 F.3d 305, 308 n.1 (5th Cir. 2007). But the historical approach of the plurality in *Van Orden* has since been adopted by a majority in *Town of Greece*. We address Justice Breyer’s concurrence simply to show that Pensacola’s actions are constitutional under both approaches.

this undeniably religious message, Justice Breyer stated that it was necessary to focus instead on the “context of the display.” *Id.* at 701. Here, by contrast, the only text associated with the monument is secular, stating that it was “Sponsored” by, “Donated” by, and “Dedicated” to members of a private secular group. *See supra* at 20.

**Context.** In assessing context, Justice Breyer first noted that a Ten Commandments display “can convey not simply a religious message but also a secular moral message . . . [a]nd in certain contexts, . . . a historical message.” 545 U.S. at 701. To determine whether the religious or secular message predominated, Justice Breyer considered two facts. First, he noted that “[t]he group that donated the monument, the Fraternal Order of Eagles, [was] a private civic (and primarily secular) organization.” *Id.* at 701. The monument “prominently acknowledge[d] that the Eagles donated the display,” thereby “distanc[ing] the State itself from the religious aspect of the Commandments’ message.” *Id.* at 701-02. Second, Justice Breyer noted that “[t]he physical setting of the monument . . . suggests little or nothing of the sacred.” *Id.* at 702. Instead, the monument sat in a “large park containing 17 monuments and 21 historical markers,”

which suggested that the monument “reflect[ed] moral principles” and “the historical ‘ideals’ of Texans.” *Id.* at 702.

The same analysis applies here. Like the Ten Commandments, a cross can convey “complex meaning beyond the expression of religious views,” including a “historical meaning.” *Buono*, 559 U.S. at 716-17. Here, as in *Van Orden*, the group that donated the monument—the Jaycees—is a secular organization. The monument also “prominently acknowledge[s] that the [Jaycees] donated the display, . . . thereby further distanc[ing] the [city]” from any religious message. 545 U.S. at 701-02.

More importantly, the “physical setting” in this case is far more appropriate than in *Van Orden*. There, the Ten Commandments monument was placed “on the grounds of the Texas State Capitol”—between the Capitol and the Texas Supreme Court. *Id.* at 745 (Souter, J., dissenting). This placement was of “immense significance” and, according to the dissent, should have subjected the monument to “a powerful presumption of invalidity.” *Id.* at 721 (Stevens, J., dissenting). Here, by contrast, the cross is far from any seat of government. It is next to a parking lot and boat ramp. Dkt. 30 at 5-6; Dkt. 30-2 ¶ 4. It is a stone’s throw from six tennis courts, two bocce ball courts, a jogging path, picnic tables, and a

playground—a setting that inspires recreation, not meditation. *Id.* Beyond that, the monument is just one of over 170 displays throughout Pensacola’s parks, all of which communicate Pensacola’s history and culture. Viewed in this context, the cross communicates a salutary message of the history of Pensacola, unity during a time of national crisis, the heroic sacrifices of the military, and the “role of religion in American life.” *Van Orden*, 545 U.S. at 686 (plurality).

***Passage of Time.*** Finally, Justice Breyer found it “determinative” that “40 years passed in which the presence of [the Ten Commandments] monument, legally speaking, went unchallenged.” *Id.* at 702. “[T]hose 40 years,” he said, “suggest more strongly than can any set of formulaic tests that few individuals, whatever their system of beliefs, are likely to have understood the monument as” an establishment. *Id.* Rather, striking down such a longstanding display would “exhibit a hostility toward religion that has no place in our Establishment Clause traditions” and would “create the very kind of religiously based divisiveness that the Establishment Clause seeks to avoid.” *Id.* at 704.

The same is even truer here. The monument stood unchallenged for over 75 years. Even now, it is being challenged only by Plaintiffs who lack

standing—who either use the monument for their own purposes or live outside the community. And unlike *Van Orden*, where there was no evidence that the monument had played any positive role in the community, the monument here has a rich history of bringing Pensacolians together for a wide variety of community events. Thus, striking down the monument here would express even more “hostility toward religion” and cause even more “religiously based divisiveness” than in *Van Orden*. *Id.*

**D. Pensacola’s actions are constitutional under the *Lemon* test.**

Even assuming the *Lemon* test were still controlling, Pensacola’s actions are constitutional. The district court struck down Pensacola’s actions under “the first prong of *Lemon*” and did not consider the other two prongs. Dkt. 41 at 11, 21 & n.10

Under *Lemon*’s first prong, a government’s actions must be supported by a “secular purpose.” *McCreary*, 545 U.S. at 864. This element of the *Lemon* test is “seldom dispositive,” *id.* at 860, because it is a “fairly low hurdle,” *Glassman v. Arlington County*, 628 F.3d 140, 146 (4th Cir. 2010). The government’s purpose “need not be exclusively secular.” *Bown v. Gwinnett Cty. Sch. Dist.*, 112 F.3d 1464, 1469 (11th Cir. 1997). It is enough if the government identifies a “plausible secular purpose.” *King*



*v. Richmond County*, 331 F.3d 1271, 1277 (11th Cir. 2003). If it does, the burden shifts to the plaintiff “to rebut the stated secular purpose with evidence showing that the articulated purpose is insincere or a sham.” *Id.* To do this, the plaintiff must rely on “traditional external signs” of purpose “that show up in the ‘text, legislative history, and implementation of the statute,’ or comparable official act.” *McCreary*, 545 U.S. at 862 (citation omitted). The government’s “stated reasons will generally get deference,” and a court will set those reasons aside only in “unusual cases.” *McCreary*, 545 U.S. at 864-65.

Here, Pensacola had an obvious secular purpose for allowing the cross to be erected in 1941: to allow private citizens to gather as they saw fit during a time of national crisis. It also has an obvious secular purpose for allowing the cross to remain today: to preserve part of the city’s history and culture. Neither the Plaintiffs nor the district court cited any evidence suggesting that these purposes are a sham.

Instead, the district court concluded that the city had a primarily religious purpose based on three facts: “the nature of the Latin cross, its dedication at the Easter Sunrise Service, and the mayor’s statements.” Dkt. 41 at 19. According to the district court, there can be no secular purpose

for erecting a Latin cross; the dedication of the cross at a private Easter event should be attributed to the government; and a statement saying that there should be “a place for religion in the public square” was “essentially an admission that the cross has been sustained for a religious purpose.” Dkt. 41 at 11. All three of these assertions are mistaken.

***Latin cross.*** First, the Supreme Court in *Buono* recognized that there can be a variety of secular reasons for erecting a cross. A cross is “often used to honor and respect” “heroic acts, noble contributions, and patient striving.” 559 U.S. at 721. It can be used “to honor our Nation’s fallen soldiers.” *Id.* at 715. It can be used to “mark[] . . . the place where [someone] perished.” *Id.* at 718-19. Or it can be used simply as a “public acknowledgment of religion’s role in society.” *Id.* at 719.

More importantly, the court failed to distinguish between the *private* purpose of the Jaycees in erecting the cross, and *Pensacola’s* purpose in allowing it. There is no evidence that the Jaycees had a primarily religious purpose; as a secular organization, they simply wanted to bring the community together in a time of national crisis. But even if they did, under *Lemon*, “the focus of this first [prong of the] *Lemon* test is on the government’s purpose, and not that of a private actor.” *Am. Atheists, Inc. v.*

*Davenport*, 637 F.3d 1095, 1118 (10th Cir. 2010). Here, Pensacola did not even choose the symbol of the cross, and there is no evidence that it had a religious purpose in allowing the Jaycees to do so.

***Easter event.*** The district court made the same mistake in attributing a *private* Easter event to the city. The city played no role in organizing or running the event. It simply followed its practice of evenhandedly allowing community gatherings in its parks. Indeed, it would have violated the Constitution to discriminate against a religious event. *Niemotko*, 340 U.S. 268. In keeping with the city’s policy of evenhanded access to its parks, the site has since hosted a wide variety of events, including everything from Roosevelt’s memorial to a peace vigil to outdoor movies, and even Plaintiff Suhor’s own Satanic rituals. Thus, the fact that the cross was first erected at a private Easter event does not indicate that *Pensacola* has a religious purpose.

The district court also erred by focusing solely on the events of over seventy years ago. The Supreme Court has recognized that “governmental purpose [can] change[],” and courts must “take account of genuine changes in constitutionally significant conditions.” *McCreary*, 545 U.S. at 873-74; *see also Am. Jewish Cong. v. City of Chicago*, 827 F.2d 120, 126-

27 (7th Cir. 1987) (noting that a comment “relevant to the original purpose of [a display], reveals little about the purpose behind the [current] display”). The Court has also emphasized that “[t]he ‘message’ conveyed by a monument may change over time.” *Pleasant Grove City v. Summum*, 555 U.S. 460, 477 (2009). Here, the question is whether Pensacola has a secular purpose for allowing the display *today*. And the answer is obviously yes: The city wants to preserve a unique element of its history and culture.

**Mayor’s statements.** Perhaps aware that it needed evidence of an impermissible purpose *today*, the district court seized on the Mayor’s statement that he hopes there will “always [be] a place for religion in the public square.” Dkt. 41 at 11. According to the district court, this is “essentially an admission that the cross has been sustained for a religious purpose.” *Id.* But that is absurd. The Supreme Court itself has said that there is a place for religion in the public square—indeed, that “[t]here is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789.” *Van Orden*, 545 U.S. at 686. Saying that one hopes there is a place for

religion in the public square is no different than saying that the government should not “purge from the public sphere all that in any way partakes of the religious.” *Id.* at 699 (Breyer, J., concurring).

The district court also truncated the Mayor’s quote. The entire statement was: “We want to respect all religions *without showing preference to any*. Personally, I hope there is always a place for religion in the public square. I surely don’t want to remove it. However, this is a question we are going to refer to our attorneys.” Dkt. 31-15 at 36 (emphasis added). Far from suggesting any purpose to *advance* religion, this shows a desire to remain neutral to religion—and to avoid “a hostility toward religion that has no place in our Establishment Clause traditions.” *Van Orden*, 545 U.S. at 704.

In short, Pensacola has an obvious secular purpose for allowing the cross to remain: to preserve the city’s history and culture. Plaintiffs have not identified any evidence that this purpose is a sham. Accordingly, Pensacola’s actions satisfy *Lemon*’s purpose test.<sup>44</sup>

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<sup>44</sup>Pensacola’s actions satisfy the other two prongs of *Lemon*, too. First, the display does not have the effect of “governmental endorsement of religion.” *King*, 331 F.3d at 1282. Under this prong, “context is the touchstone,” *id.*; and the context here includes the fact that the cross is over 76

## CONCLUSION

This Court should vacate and remand, with instructions to dismiss the case for lack of jurisdiction. Alternatively, if the Court reaches the merits, the decision of the district court should be reversed and the case remanded for entry of summary judgment in favor of the city.

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years old, is tucked away in the corner of a nondescript park, and is one of over 170 expressive displays commemorating Pensacola's history and culture. Nor is there any evidence of "entanglement" with religion. The cross was donated to the city by a private organization, and Pensacola allows anyone to hold activities at the park on a religion-neutral basis. Dkt. 31-18 at 12-16; Dkt. 31-18 at 19-20.

September 26, 2017

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 32-4, this brief contains 12,956 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font.

Dated September 26, 2017

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## CERTIFICATE OF SERVICE

I certify that on September 26, 2017, I caused the foregoing brief to be filed electronically via the Court's electronic filing system, which then served it upon the following registered counsel of record for Plaintiffs-Appellees:

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# **ADDENDUM 1**

# History of Pensacola Parks

*A Project of the Pensacola Parks & Recreation Department*

## Overview

The City of Pensacola maintains 93 parks and open spaces designed to enhance the quality of life of all citizens and visitors of Pensacola. To preserve the heritage of our parks, the Pensacola Parks and Recreation Department launched a project in 2016 to document the history of Pensacola parks. Since then, City staff and volunteers have visited every park, researched the history of those parks, and documented the monuments and other amenities in the parks. The following chart summarizes the history of Pensacola's parks and the monuments located there.

This document remains a work in progress and will be updated periodically. If you have additions or corrections, please send them to our Marketing Division at [prmarketing@cityofpensacola.com](mailto:prmarketing@cityofpensacola.com). Thank you for supporting your Parks and Recreation Department, and we hope you enjoy Pensacola's wonderful parks.

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
1.ADMIRAL MASON PARK	200 South 9 <sup>th</sup> Ave.	5.8	<p><b>c. 1940s</b></p> <p>From the 1950s to the early 1980s, this was the site of a baseball stadium called Admiral Mason Park, named in honor of Admiral Charles P. Mason, a Vice Admiral in the United States Navy and two-time mayor of Pensacola. The 2000-seat stadium was the home for minor league baseball in Pensacola. The league folded in 1962, and the park languished for two decades before being demolished. In 1991, the City of Pensacola appropriated the site of the former stadium for the planned Wall South, a replica of the Vietnam Veteran's Memorial in Washington, D.C. The site has since become known as Veteran's Memorial Park and is the home to several other monuments.</p>	*See Veteran's Park listing for monuments.
2.ALABAMA SQUARE	401 West Gonzalez St.	1.3	<p><b>1884</b></p> <p>Alabama Square is one of the city's oldest squares, appearing on a map from 1884.</p>	
3.ALLEN PARK	141 Calloway Ave.	1.9	<p><b>c. 1955</b></p> <p>This park was dedicated and named for the late Mr. James A. Allen.</p>	
4.ANDALUSIA SQUARE	1501 E. Cervantes St.	2.4	<p><b>1884</b></p> <p>Andalusia Square is one of the city's oldest squares, appearing on a map from 1884.</p>	*Concrete marker noting a tree that was planted in honor of Miss Nell Burrow. Miss Burrow was president of the Pensacola Federation of Garden Clubs from 1931 – 1933.
5.ARAGON PARK	540 Aragon St.	0.25	<p><b>c. 1945</b></p> <p>Aragon Park was completed in October 1972 when over 100 men, women, and children got together and did the work themselves. The park is adjacent to what was a public housing community and is now a development of luxury homes. When dedicated in 1972, the park was under the authority of the Aragon Park Recreation Association.</p>	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
6.ARMSTRONG PARK	300 West Lakeview Ave.	2.1	c. 1950's Armstrong Park was established by the Rotary Club, which also furnished all of the playground equipment.	
7.AVIATION DISCOVERY PARK	4200 Jerry Maygarden Rd.	0.82	October 7, 2006 The General Daniel "Chappie" James, Jr. Aviation Discovery Park project in Pensacola was undertaken by Pensacola Area Flight Watch, an organization dedicated to the interests of general aviation, and the promotion of aviation among our youth. It has also been used as a way to garner support for the airport among citizens of the area by making the airport and its operations easily visible to them. It also is a way to generate an interest in aviation on the part of younger citizens.	*Signage describing how the park came to be and the many hours, volunteers and money that went into making the park a reality. *Donor Wall of Honor showing donor names etched in stone tiles. *Located on the LEAP Trail near Aviation Discovery Park is a granite marker under a tree dedicated to the memory of Daniel Eric Doelker.
8.BAARS PARK	4340 N. 12 <sup>th</sup> Ave.	14.0	The Baars family has included prominent landowners in Pensacola since the early 1900s. Henry Gerhard Baars came to Pensacola after the Civil War to enter the pitch pine trade. He married Mary Ellison Dunwody and they had 8 children, of whom only 4 lived to adulthood. It was Henry's son Theo Baars who started acquiring massive acres of land and helped shape real estate in Pensacola. Although it is not known when the land for Baars Park was given to the city, a newspaper clipping from January 1955 makes mention of Theo Baars giving the land to the city for the park.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
9.BARTRAM PARK	211 Bayfront Pkwy.	2.3	<b>1977</b> Bartram Park is named for naturalist William Bartram who wrote about his travels in Alabama, Florida, Georgia and South Carolina. An overnight stay in Pensacola on September 5, 1775, offered William Bartram a chance to write down his impressions of the sleepy little shipping village of Pensacola. He related in his book <i>Travels</i> , published in 1791, how pleased he was to have visited Pensacola.	*Identifying signage. *Informational signage titled "Supremacy, Siege, and the Sea." *Informational signage titled "Defending a Coastal Colony." *Informational signage relating to the DeSoto Trail. *Bronze memorial plaque to Timmothy David Showalter. *Wooden bench in memoriam of Timmothy David Showalter. *Sculpture entitled <i>Muscle Beach</i> . *Plaque for sculpture entitled <i>Muscle Beach</i> . *Homemade memorial to Cecil Warren Davis. *Fiesta of Five Flags monument depicting past De Lunas. *Memorial pavers around the monument.
10.BAY BLUFFS PRESERVE	3400 Scenic Hwy.	26.0	<b>1984</b> Dating back to the 1750s, abundant clay deposits in these highly eroded bluffs provided the raw material for brickyards of the day. Rising from 50 to 75 feet above Escambia Bay, the bluffs are a landmark and unique geological feature in Florida.	*Dedication Monument dated September 14, 1984. *City signage.
11.BAYCLIFF ESTATES	4150 Montaigne Dr.	8.5	<b>c. 1970</b> The Baycliff Estates subdivision began in the early to mid 1970s. This park is named for the subdivision.	
12.BAYOU TEXAR BOAT RAMP	2700 East Cervantes St.	2.6	<b>1984</b> In 1984, Bayou Blvd. was closed from Strong Street to Cervantes Street to allow for the construction of the boat ramp.	*Dedication monument August 24, 1984.

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>13.BAYVIEW PARK</b>	2001 E. Lloyd St.	29	<b>1905</b> Bayview Park was the site of City's first Independence Day celebration. The park has gone through many changes over the years. At one time, it was a popular swimming spot in Pensacola, boasting a large diving tower in Bayou Texar. For decades it has been the site of the annual Easter Egg Hunt that attracts hundreds of children every year. Marriages are performed there, and concerts and charity events have long been staple activities conducted in Bayview Park.	*Blue wooden cat. *Granite monument dedicated to the memory of Tim Bonifay, an avid skier who passed away in 1979. *Plaque dedicated to C. Frasier Phelps, sponsored and donated by the Junior Chamber of Commerce on April 17, 1949. Mr. Phelps was President of the Junior Chamber of Commerce in 1942 and the Chairman of the Junior Chamber of Commerce's Easter Sunrise committee in 1941. *Amphitheater. *Bayview Tennis Courts monument c. 1920, by the Friends of Tennis. *Plaque in memory of Larry Caton who passed away in 2009. *Signage on Dog Beach dedicated to Byron and "Charley" Campbell. Mr. Campbell was an avid dog person and was instrumental in the development of the dog parks at Bayview Park. Charley was his beloved four legged friend. *Bayview Cross, erected in 1941 by the Pensacola Junior Chamber of Commerce.
<b>14.BAYWOODS PARK</b>	4597 Baywoods Dr.	12.0	Named for the subdivision in which it was developed.	
<b>15.BELVEDERE PARK</b>	4001 San Gabriel Dr.	6.6	Named for the neighborhood in which it is located.	
<b>16.BILL GREGORY PARK</b>	150 N. "W" St.	5.9	The park is named after Bill Gregory. At the present time, the park is closed due to the construction of a retention pond. After completion, all park signage will be returned and the little league field will be reconstructed and once again named for Edward O'Brien Pursell, who was instrumental in bringing little league baseball to the area.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>17.BRYAN PARK</b>	1200 Langley Ave.	6.2	<b>2011</b> For many years this park was a passive field, with soccer being the only purpose. In 2008, the Tryon Branch Library was relocated to the site and opened the door for the development of the park as it is today. Completed in 2011, the park developed through public and private funds now boasts some unique features, including the Born Learning Trail, a sensory garden, as well as a pirate ship play structure.	*Bronze plaque alongside a bench, in memory of Joel Norman, friend and neighbor.
<b>18.CAMELOT PARK</b>	7705 Gallahad Rd.	3.3	Named for the subdivision in which it was developed.	
<b>19.CATALONIA SQUARE</b>	2300 N. 12 <sup>th</sup> Ave.	2.4	<b>1884</b> Catalonia Square is one of the city's oldest squares, appearing on a map from 1884.	
<b>20.CECIL T. HUNTER POOL</b>			Cecil T. Hunter served on the City Council for 12 years and during that time served on a variety of boards and committees. He was the driving force behind the construction of the pool.	*Dedication monument.



Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>21.CHAPPIE JAMES MEM. PK.</b>	1608 Dr. MLK, Jr. Blvd.	0.27	<p><b>1920</b></p> <p>General Daniel “Chappie” James was born in the house in 1920 that has now become the Daniel “Chappie” James Memorial Park. General James rose quickly through the ranks in the Air Force, becoming the first African American 4 Star General in 1975.</p> <p>General James became a Tuskegee Airman in 1943. He flew 101 combat missions in the Korean Conflict. In 1966 he was named vice commander of the 8<sup>th</sup> Tactical Fighter Wing in Thailand, flying 78 combat missions over North Vietnam. As commander of an Air Force base in Libya, General James faced down a threatening Libyan Colonel named Mohamar Khadafi over his attempted entry into the General’s base. Throughout his career he was always proud of his Pensacola roots.</p>	*The Daniel “Chappie” James birthplace has been placed on the National Register of Historic Sites and is so signified by an informational marker at the site.
<b>22.CHIMNEY PARK</b>	5500 Scenic Hwy.	2.2	<p><b>1980s</b></p> <p>The park is centered around the remnants of a brick chimney, once part of the steam power plant for the Hyer-Knowles Planing Mill. When Confederate General Braxton Bragg evacuated his forces from Pensacola in March 1862, he was given a “scorched earth” command by Secretary of War Judah P. Benjamin to “destroy all machinery private and public, which could be useful to the enemy: especially disable the sawmills in and around the bay.”</p>	<p>*Hyer-Knowles Planing Mill informational marker.</p> <p>*Glass case containing the history of the chimney.</p> <p>*Bronze Plaque in a brick monument signifying that the property was listed on the National Register of Historic Places by the United States Department of the Interior on May 24, 2012.</p> <p>*Memorial plaque to Christopher Wallace 1953-2012.</p> <p>*Remains of the chimney.</p>

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>23.COBB COMM. CENTER</b>	602 E. Mallory St.	1.5	<b>1967</b> Cobb Center is named for Dr. Eli Sanford Cobb. He graduated from Washington High School and Meharry Medical College in Nashville, Tennessee. He began his practice in 1916 in Pensacola. He entered the army during World War I in 1918. Upon his discharge in 1919, he resumed his practice in Pensacola. A lover of sports, Dr. Cobb organized two semi-pro teams – the Pensacola Seagulls Baseball Team and the Pensacola Giants Football Team.	*Bronze informational marker.
<b>24.COMM. MARITIME PK.</b>	300 W. Main St.	16.0	<b>2012</b> The Vince Whibbs, Sr. Community Maritime Park opened in 2012. It is the home to Fetterman Field, the home of the Blue Wahoos Double A baseball team and the Randal K. and Martha A. Hunter Amphitheater. Vince Whibbs served as Mayor of Pensacola from 1978-1991, and was a superb ambassador for all things City of Pensacola.	*Life-size statue of Vince Whibbs. *Bronze plaque thanking the Downtown Pensacola Rotary Club for their leadership role in the design, fund raising, construction, and opening of the Centennial Rotary Playground. *Maritime Park Dedication plaque. *Fetterman Field Dedication plaque. *Blue Wahoos Mission Statement plaque. *Randal K. and Martha A. Hunter Amphitheater signage. *Paver noting 100 years of Rotary by Bob and Cindy Hart. *Paver memorial to Stacy Swartz. *Paver honoring grandchildren of Frank and Sylvia Bell. *Numerous pavers.
<b>25.CORDOVA SQUARE</b>	1101 N. 12 <sup>th</sup> Ave.	2.4	<b>1884</b> Cordova Square is one of the city's oldest squares, appearing on a map from 1884.	*Signage on gazebo signifying that the gazebo was built by the East Hill Neighborhood Association and depicting their mission. The gazebo was built in honor of Colleen McDonough, founding member of the EHNA.

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>26.CORINNE JONES PARK</b>	620 E. Government St.	4.6	<p>Corinne Harvey Jackson Jones was born September 1, 1897 in Pensacola, FL. She was named for, given to and raised by her Godmother Mrs. Corinne Harvey, who had no children of her own. Mrs. Jones began her significant civic contributions in the 1930s by using her home to house the Works Progress Administration's Pensacola headquarters, where she helped train hundreds of men and women for jobs.</p> <p>When WWII broke out, Mrs. Jones went to work as an aircraft mechanic at Pensacola's Naval Air Station. During that time, she founded the first black Girl Scout troop in Pensacola.</p> <p>After the war, she was offered the job as Director of Fricker Community Center, where she worked from 1945 until 1962, when she retired.</p> <p>Throughout her life, Mrs. Jones was active in youth and adult organizations including the YWCA, Fiesta of Five Flags, the Green Thumbs Garden Club and the American Cancer Society. In 1965, the Recreation Board voted to name the community center known as the West Side Building after Mrs. Jones.</p> <p>In 2004, Hurricane Ivan destroyed that facility, along with Sanders Beach Community Center. The funds from insurance and other sources were combined to rebuild the facility at Sanders Beach. It was determined that that facility would share the name of Mrs. Jones.</p>	
<b>27.D'EVEREUX PARK</b>	4437 D'Evereux Dr.	2.4	Named for the neighborhood in which it is located.	
<b>28.DURANT PARK</b>	Barcia and 9 <sup>th</sup> Ave.	0.69	This park was formerly known as Barcia Park. The name was changed to honor Dr. Alvin L. Durant, who has been the pastor of Macedonia Baptist Church for over 60 years.	
<b>29.DUNMIRE WOODS PARK</b>	1135 Northbrook Ave.	2.8	Named for the neighborhood in which it is located.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
30.DUNWODY PARK	3600 McClellan Dr.	5.7	This park is named for the family of Mary Ellison Dunwody Baars. Her father was John Franklin Dunwody of Dairen, Ga. She was the wife of Henry Gerhard Baars.	
31.EASTGATE PARK	3500 Forest Glen Dr.	6.6	Named for the neighborhood in which it is located.	
32.EASTGATE-ELIZABETH FERNIANY PEADEN PARK	6385 Audubon Dr.	2.1	This park was formerly known as Audubon-Eastgate Park. Improvements to this park were the results of the efforts of Elizabeth Ferniany Peaden. Mrs. Peaden was instrumental in securing a gazebo and other amenities. In 2009, the City changed the name to honor Mrs. Peaden.	*Plaque dedicating the gazebo to Elizabeth Ferniany Peaden, January 22, 2009.
33.EPH CENTER	3208 E. Gonzalez St.	0.35	Named for the neighborhood in which it is located.	
34.EPH LIONS CLUB PARK	2900 E. Gonzalez St.	2.6	Named for the support of the Lions Club and the neighborhood in which it sits.	
35.ESTRAMADURA SQUARE	1500 E. Lakeview Ave.	2.4	Estramadura Square is named for a Spanish region bordering Portugal.	
36.MIKE DESORBO EXCHANGE PARK	3100 E. Lakeview Ave.	14.0	Exchange Park is named for the Exchange Club of Pensacola, who pledged their support for the field as it was being developed in 1970. Since then, they have devoted countless dollars and time to the success of the park. Recently, the name of Michael J. DeSorbo has been added to Exchange Park to honor Mr. DeSorbo, who was a long time City Councilman and all time sports supporter. He currently serves as park manager there.	
37.FAIRCHILD PARK	2029 Fairchild Dr.	5.1	Named for the street on which it is located.	
38.FIRESTONE PARK	1900 E. Baars St.	0.09	This park is named for Mary Firestone Baars, wife of Theo Baars, who was a very prominent land holder in Pensacola.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
39.FIVE FLAGS PARK	1401 E. Gregory St.	0.43	This park is significant in that it showcases the flags of the five countries that have ruled Pensacola. Those countries are: Spain, France, Britain, the Confederacy, and the United States.	
40.FORT GEORGE PARK	501 N. Palafox St.	0.43	<p><b>c. 1778</b></p> <p>Fort George was a British fort at Pensacola, likely built in 1778. It was the largest of three forts constructed by the British. It surrendered to Spanish forces led by General Bernardo de Gálvez following the Battle of Pensacola in 1781. The Spanish government never occupied the fort and it was allowed to deteriorate. The site was added to the National Register of Historic Places on July 8, 1974.</p>	<p>*Dedication plaque commemorating the American Revolution.</p> <p>*Plaque dedicated to the Sons of the American Revolution Florida Society.</p> <p>*Informational plaque – Native Americans.</p> <p>*Informational plaque – the Soldiers of 1781.</p> <p>*Informational plaque – Fuerte San Miguel.</p> <p>*Informational plaque – Jackson’s Invasion.</p> <p>*Plaque explaining Archaeology at Fort George.</p> <p>*Wall of informational plaques.</p> <p>*Cannons used in American Revolution.</p> <p>*Plaque signifying Colonial Archaeological Trail.</p> <p>*Informational plaque – British Pensacola.</p> <p>*Informational plaque – Fort George.</p> <p>*Informational plaque – Gálvez.</p> <p>*Informational plaque – Battle of Pensacola.</p> <p>*Stone monument and bust of Bernardo de Gálvez, donated by Spain on the 200<sup>th</sup> anniversary of the Battle of Pensacola.</p> <p>*Battle of Pensacola roadside marker.</p> <p>*Cannons atop hill.</p>
41.FRICKER COMM. CENTER	900 N. “F” St.	2.1	Fricker Community Center is named for Frank Fricker who was an original member of the Recreation Board. His service began in 1943 and continued until 1958.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
42.GEORGIA SQUARE	1000 N. Palafox St.	0.74	<p><b>c. 1800s</b></p> <p>Georgia Square is one of the city's oldest parks. In 1908, the board of public works had to devise a plan to build a hard road on Palafox Street to divert a road that had been cut through the park for convenience. At the time, there was nothing in the park but overgrown wilderness, so travel took a short cut through the square.</p> <p>In 1969, half of Georgia Square was named Miranda Square. It seemed that the city had a bust of General Miranda, but no place to put it, so the park was divided to allow for the placement.</p>	
43.GRANADA SQUARE	1001 E. Cervantes St.	2.3	<p><b>1884</b></p> <p>Granada Square is one of the city's oldest squares, appearing on a map from 1884.</p>	
44.GRANADA SUBDIVISION PK.	103-105 Pineda Ave.		Named for the subdivision in which it is located.	
45.GREENWOOD PARK(GARDEN CENTER)	1850 N. 9 <sup>th</sup> Ave.	1.7	This is a passive park located directly behind the Garden Center on 9 <sup>th</sup> Avenue.	*Stone plaque placed at the base of a tree planted in honor of Edna Golay Briggs, who was president of the Pensacola Federation of Garden Clubs from 1933-1936.
46.GULL POINT COMM. CENTER	7140 Spanish Trail	5.1	Gull Point is named for the area in which it is located. The area sits on the bay at the foot of Creighton Road and has also been called Devil's Point. It dates back to the 1700s.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>47.H.K. MATTHEWS PARK</b>	3100 N. 12 <sup>th</sup> Ave.	2.5	<p><b>2006</b></p> <p>This park was formerly known as Esperanza Park. Reverend Hawthorne Konrad (H.K.) Matthews is an African-American minister who was active during the Civil Rights Movement in the Pensacola area.</p> <p>Matthews became involved with the local NAACP and Southern Christian Leadership Conference chapters during the Civil Rights Movement. As president of the Pensacola Council of Ministers, Matthews led sit-in protests that successfully integrated Palafox Street lunch counters. He also helped the successful efforts to get blacks hired at such businesses as Sacred Heart Hospital, Southern Bell Telephone Company and West Pensacola Bank.</p>	
<b>48.HIGHLAND TERR. PARK</b>	111 Berkley Ave.	2.7	Highland Terrace Park is located adjacent to the Woodland Heights Community Center.	
<b>49.HITZMAN-OPTIMIST PARK</b>	3221 Langley Ave.	17.0	<p><b>June 8, 1971</b></p> <p>On June 8, 1971, the Pensacola City Council passed Resolution No. 26-71 changing the name of the Northeast Recreation Area to James W. Hitzman Park. Mr. Hitzman served for 25 years in the Recreation Department, devoting his life to “not only to improving the recreational opportunities of our citizens, but [also] unselfishly to removing clouds of adversity and yokes of despondency from the minds and hearts of all who knew him.”</p> <p>In 1976, the Northeast Pensacola Optimist Club adopted the park and has contributed countless dollars and time to making it a fun and safe place for children of all ages.</p>	



Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
50.HOLLICE T. WILLIAMS PARK	1601 N. Hayne St.	25.0	<b>2006</b> This park was formerly known as Central Park, and was renamed to honor Reverend Hollice T. Williams, who enjoyed a nearly 50-year career with the YMCA, and also was a 6 time City Councilman.	
51.KIWANIS PARK	1801 W. Romana St.	2.3	<b>c. 1944</b> The Kiwanis Club of Pensacola funded the development of this park.	
52.LAMANCHA SQUARE	1400 E. Cross St.	2.4	Lamancha Square is one of the city's oldest squares, having been laid out and appearing on maps from the 1800s.	
53.LAVALLET PARK	3910 Montalvo Dr.	3.8	Lavallet Park is named for the neighborhood in which it is located.	
54.LEE SQUARE	602 N. Palafox St.	1.8	<b>June 17, 1891</b> Lee Square is a Civil War memorial park in downtown Pensacola. Situated atop Gage Hill on the former site of Fort George and Fort McClellan, it was known as Florida Square until renamed for Confederate General Robert E. Lee in 1889. In 1891, after years of fundraising and planning, a 30-foot monument to "our Confederate dead" was erected in the park, featuring a large granite sculpture of a Confederate soldier, modeled after a painting by John Adams Elder. The monument is dedicated to Jefferson Davis, Stephen R. Mallory, Edward Aylesworth Perry and "the Uncrowned Heroes of the Southern Confederacy.	*Monument to "Uncrowned Heroes of the Southern Confederacy." *Cross in memory of Robert F. Meade. *Personal tributes to Robert F. Meade.



Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
55.LEGION FIELD	1301 W. Gregory St.	7.6	<b>May 17, 1928</b> Legion Field opened to great accolades in May 1928. The park was praised as one of the finest in the South and was at the time home to the Pensacola Fliers.	*Monument to Charles Jefferson Marvray, I. He was an African American baseball player with considerable skills who played in the Negro League and was one of Pensacola's first professional ballplayers. His hopes of playing in the Major Leagues were dashed when World War II broke out and he went into the Army. After returning to Pensacola, he paved the way for the integration of teams and ballparks.
56.LIONS PARK	1201 E. LaRua St.	2.5	<b>c. 1940</b> This park was developed and supported by the Lions Club.	
57.LONG HOLLOW PARK	1001 N. Guillemard St.	0.81	<b>2003</b> This park is located in the Long Hollow neighborhood. It was developed by the collaborative efforts of the City, the neighborhood association and the Governor's Front Porch Revitalization Council of Pensacola.	
58.MAGEE FIELD	2400 Dr. MLK, Jr. Blvd.	4.2	<b>1951</b> Magee Field is located in the Eastside neighborhood. It contains facilities for football, baseball, and basketball, as well as playground equipment and a covered shelter. Dedicated in 1951, it is named after Dr. A. S. Magee. The property underwent an extensive renovation in 2006-2007.	
59.MALAGA SQUARE	1000 E. Blount St.	2.4	One of the oldest squares in Pensacola, Malaga Square dates back to the 1800s.	
60.MALCOLM YONGE GYM	917 E. Jackson St.	1.4	Malcolm Yonge Gym was named for Malcolm Yonge, who was an original member of the Recreation Board and served from 1943 until his death in 1951.The center was dedicated on July 27, 1961.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
61.MALLORY HEIGHTS PK #1	3000 Rothchild Dr.	3.4	Mallory Heights Park is named for the neighborhood in which it sits.	
62.MALLORY HEIGHTS PK#2	3600 Goya Dr.	6.0	Mallory Heights Park is named for the neighborhood in which it sits.	
63.MALLORY HEIGHTS PK#3	2600 Scenic Hwy.	15.0	Mallory Heights Park is named for the neighborhood in which it sits.	
64.MARITIME PARK		27.5	<p>The Vince Whibbs Community Maritime Park, often referred to as Maritime Park, is a public-private development that occupies city owned property once known as the Trillium Property. The concept for the park originated in 2000, when the City Council approved the purchase of the land and designs for the park began.</p> <p>While designs and purposes for the park changed over the coming years, the park as we know it today was dedicated in June 2012.</p>	<p>*Bronze statue of Mayor Vince Whibbs, who served as Mayor of Pensacola from 1978-1991.</p> <p>*Appreciation plaque to the Pensacola Downtown Rotary Club for their leadership role in the design, fund raising, construction and opening of the Centennial Rotary Playground.</p> <p>*Dedication plaque – June 9, 2012.</p> <p>*Field dedication plaque to Vice Admiral Jack Fetterman. The Blue Wahoos baseball team named their field for the decorated Navy leader and community activist.</p> <p>*Plaque depicting the Blue Wahoos mission and vision statements.</p> <p>*Signage on Randal K. and Martha A. Hunter Amphitheater.</p> <p>*Concrete paver celebrating 100 years of Rotary by Bob and Cindy Hart.</p> <p>*Concrete paver in memory of Stacy Swartz – Jan. 10, 1961.</p> <p>*Concrete paver in honor of their grandchildren by Frank and Sylvia Beall.</p> <p>*Various other pavers.</p> <p>*Soon to be installed are plaques recognizing the members of the Maritime Park Board for their efforts in the construction and management of Maritime Park.</p>

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
65.MARTIN LUTHER KING, JR. PLAZA	50 N. Palafox St.	1.3	<b>1992</b> Dedicated to the revolutionary Civil Rights activist, this plaza serves as a reminder of the plight of one of the world's most enduring faces of freedom and equality.	*Signage. *Monument and bust of Dr. Martin Luther King, Jr. *Bronze sponsor plaques.
66.MCNEALY PARK	520 Woodlands Dr.	2.7	This park was formerly named Woodland Heights Park and on April 12, 2012, the Pensacola City Council voted to change the name to the Rev. William E. McNealy, Sr. Park. Rev. McNealy has long been the pastor at Bethel AME Church and very active in the Woodland Heights neighborhood.	
67.MIRAFLORES PARK	1601 E. LaRue St.	2.5	Ricardo Palma was an author and academic who resided in Miraflores, Spain. The bust was a gift to the city in 1965 from Mario Carrejos Quinnes, the Mayor of Miraflores.	*Monument to Ricardo Palma. *Concrete plaque by Boy Scouts of America in memoriam of Eagle Scouts Jack Tilford and Jimmy Jerauld.
68.MIRALLA PARK	650 Connell Dr.	4.3	<b>1961</b> Miralla Park was opened in 1961. It fell into disrepair over the years and eventually was closed. In 1991, members of the Miralla Park Improvement Board rallied interested residents, attended council meetings, and were successful in raising funds and sponsorships to make the much needed improvements to the park.	
69.MIRANDA SQUARE	1005 N. Palafox St.	0.74	General Francisco De Miranda was a Venezuelan who was a passionate advocate of freedom. He participated in the French, Latin and North American Revolutions and fought alongside Gálvez in the Spanish victory at Pensacola in 1781.	*Monument and bust of General Francisco De Miranda. *Granite plaque to General Francisco De Miranda.
70.MORRIS COURT PARK	1401 W. Lloyd St.	2.4	Morris Court Park is located at the Morris Court Housing Project.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>71.OPERTO SQUARE</b>	1600 E. Blount St.	2.4	<b>1884</b> Operto Square is one of the city's oldest squares, appearing on a map from 1884.	
<b>72.OSCEOLA GOLF COURSE</b>	300 Tonawanda Dr.	131.0	<b>1926</b> Osceola Golf Course has a long and storied history in Pensacola. It was the first golf course locally to allow African Americans to play golf. The clubhouse is named in honor of William Noonan, who served on the Recreation Board for over 50 years.	*Wooden sign in memory of Jerry Miller 1937 – 2010. *Bronze marker in memory of Doretha Hunter 1939 – 2015 for her hole-in-one on Jan. 17, 2012.
<b>73.PARKER CIRCLE PARK</b>	601 Parker Circle	6.2	Parker Circle Park is named for the neighborhood in which it is located.	
<b>74.PINEGLADES PARK</b>	301 Euclid St.	1.5	Pineglades Park is named for the neighborhood in which it is located.	*Bronze plaque to Margie Connor, a friend to all in the Pineglades neighborhood. *Bench plaque dedicated to Marvin K. Bastion.
<b>75.PINTADO PARK</b>	1830 Hallmark Dr.	3.7	Likely named for DeVincent Sebastian Pintado (or his descendants), who was in 1822 the Surveyor General for West Florida, although this information is not verified.	

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>76.PLAZA de LUNA</b>	900 S. Palafox St.	2.4	<p><b>2007</b></p> <p>Plaza de Luna is a waterfront park overlooking Pensacola Bay. It is located at the southern terminus of Palafox Street by the Palafox Pier development on the site of the former Bayfront Auditorium, which was demolished in July 2005 following damage from Hurricane Ivan.</p> <p>In June 2006, the City of Pensacola voted to name the new park for Tristan de Luna y Arellano, whose 1559 expedition near Pensacola was America's first European settlement.</p>	<p>*Bronze statue of Don Tristan De Luna.</p> <p>*Pavers listing all who have been honored as Don Tristan De Luna during the annual Fiesta of Five Flags celebrations.</p> <p>*Plaque signifying the Spanish reign over Pensacola</p> <p>*Plaque signifying the French reign over Pensacola.</p> <p>*Plaque signifying Great Britain's reign over Pensacola.</p> <p>*Plaque signifying the Confederate States's reign over Pensacola.</p> <p>*Plaque signifying the United States's reign over Pensacola.</p> <p>*Concrete "Celebrate Pensacola" paver.</p> <p>*City of Pensacola paver.</p> <p>*Paver depicting that on that spot in 1942, Dick asked Patsy to marry him and she said "yes"</p> <p>*Plaque signifying that the first Presbyterian Church in Pensacola Florida was established in 1845.</p> <p>*Numerous other pavers.</p> <p>*Bronze Plaza De Luna dedication plaque – 2007.</p> <p>*Bronze dedication plaque from the Municipal Auditorium that previously sat on the site of Plaza De Luna. The auditorium was built in 1955 and destroyed by Hurricane Ivan in 2004.</p> <p>*Historic marker honoring the United States Coast Guard Cutter Sebago.</p>

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>77.PLAZA FERDINAND VII</b>	300 S. Palafox St.	1.6	<p><b>1815</b></p> <p>Plaza Ferdinand VII is an outdoor garden and park in the Pensacola historic district. It is located on Palafox Street between Government and Zaragossa Streets. It is named after King Ferdinand VII of Spain. The park is dominated by three main features: a fountain, an obelisk dedicated to William Dudley Chipley and a bust of Andrew Jackson. The cession of Florida to the United States from Spain occurred at the Plaza on July 17, 1821. General Andrew Jackson made a public speech to townspeople, informing them that the land was now the Florida Territory, and that Pensacola would be its capital. General Jackson was later sworn in as the first Territorial Governor in the plaza. The first time the Star Spangled Banner was played on Florida soil, it was played at Plaza Ferdinand VII.</p>	<p>*Bust of Andrew Jackson, who raised the United States flag for the first time in Florida in Plaza Ferdinand.</p> <p>*Bronze plaque depicting the transfer of West Florida from Spain to the United States on July 17, 1821.</p> <p>*Dedication plaque – General Andrew Jackson – dedicated May 19, 1984 by the Pensacola Historic Preservation Society.</p> <p>*Plaza Ferdinand Renovation monument.</p> <p>*Fountain.</p> <p>*City signage.</p> <p>*Obelisk with bust of William Dudley Chipley, who in addition to being a decorated officer in the Confederate Army, was the creator and builder of the Pensacola and Atlantic Railroad, President of the Board of Trustees of the Confederate Memorial Institute, Vice-President of the Board of Trustees of the Florida State Agricultural College, a member of the board of Trustees of Stetson University and Tallahassee Seminary, Chairman of the State Democratic Executive Committee of Florida, Mayor of Pensacola, and State Senator from Escambia County.</p> <p>*Historic cannons.</p>
<b>78.ROGER SCOTT ATHLETIC COMPLEX</b>	2130 Summit Blvd.	47.0	<p>Roger Scott Athletic Complex is named for Roger Scott, who was on the Recreation Board for more than 20 years, serving as chairman during that time. He served the Pensacola community on many boards and organizations and was devoted to the promotion of tennis. In the spring of 1964, the tennis center was named for Mr. Scott. Unfortunately, he unexpectedly passed away in October of that year.</p>	<p>*Dedication plaque.</p> <p>*Pell-i-can – dedicated in honor of Margo Pell.</p> <p>*Bronze plaque dedicated in honor of Margo Pell.</p> <p>*Fence banner dedicated to Terry Kellen, co-founder and first president of the Greater Pensacola Ladies' Tennis League.</p> <p>*Tennis Center signage.</p> <p>*Bronze plaque in memory of Deborah Larsen.</p> <p>*Bench and bench plaque in honor of Vicki Fuller.</p> <p>*Bench plaque in memory of Johnnie and Carroll Crane.</p> <p>*Trail medallion sponsor pavers.</p>

Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
<b>79.SANDERS BEACH PARK</b>	913 S. "I" St.	7.4	<p><b>1908</b></p> <p>In 1908, Pensacola Mayor Calvin C. Goodman requested and received a donation of two blocks of waterfront from the Maxent Land Company. The parcel was developed as a public park and was eventually named for Frank Dent Sanders, a former Pensacola fireman, police chief, commissioner and mayor.</p> <p>According to minutes from a Recreation Board Meeting, Sanders Beach opened to the public and began being operated by the city in 1947. Prior to that, it had been leased to individuals to maintain and run. The formal opening was 2-27-48.</p>	
<b>80.SCENIC HEIGHTS PARK</b>	3800 Langley Ave.	3.7	Scenic Heights Park is named for the neighborhood in which it is located.	
<b>81.SEMMES PARK</b>	1380 E. Texar Dr.	1.9	This park is named for Oliver J. Semmes, Jr., who with an impressive background of training and experience in the field of civil engineering, was in 1947 appointed as city manager for the City of Pensacola.	



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<b>82.SEVERILE SQUARE</b>	311 E. Government St.	1.7	<b>1763</b> The first attempt to settle Pensacola in 1559 was made somewhere in the vicinity of Ft. Barrancas. In 1721, a second Spanish settlement was begun on Santa Rosa Island and by 1754, it had begun to thrive. On the mainland, in the area which is now Seville Square, there stood only a wooden stockade called Ft. San Miguel. That same year a hurricane virtually destroyed the island settlement and most of the survivors fled to San Miguel, thus beginning the third and finally successful settlement of the city on its present site. The British came in 1763 and built a stockade, and Seville Square was a cleared area outside its east walls. As the area within the old stockade developed, the cleared area on the east became known as Seville Square.	*Gazebo. *Carved tree support. *Memorial marker to Firefighter Vista S. Lowe, who lost his life in the line of duty in 1962. *1973 – Freedom tree and plaque dedicated to American prisoners of war and to those missing in action in Foreign Wars and to the sons and daughters of Pensacola who have fought in the cause of freedom. *May 9, 1981 – Bronze plaque dedicated to the memory of Mary Turner Rule Reed – Pioneer and inspiration for Pensacola’s historical preservation movement. *1990 - Granite monument to the Seville Square Childhood Reunion Group – dedicated to all those who spent their youth in and around Seville Square. Founded by Leo M. Flynn and Tony Manning in 1979. *City signage. *Granite plaque in memory of Timothy Paul Chapman. *The Fleming Fountain and plaque. Presented to the city by James Monroe Fleming and Ernestine Smith Fleming.
<b>83.SPRINGDALE PARK</b>	600 E. Brent Lane	5.0	Springdale Park is named for the neighborhood in which it is located.	
<b>84.TERRY WAYNE EAST PARK</b>	1620 W. Jackson St.	2.1	Originally known as the Exchange Little League Baseball Field, the name was officially changed on May 10, 1973 by resolution of the City Council to Terry Wayne East Park. Terry Wayne East was a young man who was dedicated to the game of baseball, becoming a member of the All-Star Team and voted unanimously as the most valuable player of the Little League. Sadly, he passed away from leukemia at the age of 13.	



Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
85.TIERRA VERDE PARK	5850 Reynosa Dr.	1.2	Tierra Verde Park is named for the neighborhood in which it is located.	
86.TIPPIN PARK	6600 Tippin Ave.	3.0	Tippin Park is named for the street on which it is located.	*Marker signifying tree planted in memory of Sean Thomas Cannon – April 8, 1992 – July 11, 1996.
87.TOLEDO SQUARE	1700 E. Gonzalez St.	2.4	1884 Toledo Square is one of the city's oldest squares, appearing on a map from 1884.	


88.VETERANS MEMORIAL PARK	211 E. Main St.	2.2	<p><b>1992</b></p> <p>Veterans Park is the home of Wall South, the first permanent replica of the National Vietnam War Memorial. Since its founding, the park has grown to include a WWI Memorial; WWII Memorial; a Korean War Memorial; a Revolutionary War Memorial; a Purple Heart Memorial; a monument to the submarine lifeguards who rescued so many Navy pilots in WWII, including President George H.W. Bush; a Marine Corps Aviation Bell Tower; and a Memorial to those who lost their lives in the fighting the Global War on Terror. There are also numerous plaques to honor local heroes as well.</p> <p>This park is dedicated to the memories of those who sacrificed their lives in the defense of this nation.</p>	<ul style="list-style-type: none"> <li>*Monument to the Korean War.</li> <li>*Bronze statues of American servicemen fighting in Korean War.</li> <li>*Plaques signifying service in the Korean War.</li> <li>*Pensacola's Korean War Memorial dedication plaque – May 26, 2007.</li> <li>*Bronze sponsor plaque.</li> <li>*Statue of Revolutionary War serviceman.</li> <li>*Revolutionary War Veteran's Minuteman Memorial – 1775 – 1783.</li> <li>*Donor pavers.</li> <li>*Bronze plaque in memory of fallen heroes who died during the Global War on Terrorism.</li> <li>*Bronze plaques depicting the names of fallen heroes who died in the Global War on Terrorism.</li> <li>*Flowers and flags that have been left in remembrance of fallen servicemen and women.</li> <li>*"Children's Homecoming" Memorial.</li> <li>*Bronze plaque presented by the Children of America's Twentieth Century Heroes, 2000.</li> <li>*Bronze plaque signifying the importance of the AH-1 Cobra Helicopter during the Vietnam War.</li> <li>*AH-1 Cobra Helicopter.</li> <li>*Marine Aviation Memorial Tower.</li> <li>*Memorial pavers.</li> <li>*Bronze plaque explaining the United States Marine Corps Aviation Centennial history – the first 100 years.</li> <li>*Bronze plaque dedicated to Anthony J. "Ted" Ciano, veteran, patriot, and community leader. The plaque also recognizes major donors for the project.</li> <li>*Bronze plaque explaining the meaning of the tower.</li> <li>*Monument to recipients of the Purple Heart, erected by Chapter #566 of the Military Order of the Purple Heart.</li> </ul>
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Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
				<p>*Granite bench with plaque in remembrance of George Lockwood, USN, Feb 8, 1924 – Aug. 9, 1942.</p> <p>*Blue Star Memorial – a tribute to the Armed Forces that have defended the United States of America. Marker was erected by the Pensacola Federation of Garden Clubs.</p> <p>*Monument to Pensacola Bay Area Impact 100 for donations made to arts and culture, education, environment, family, health and wellness.</p> <p>*Numerous Vietnam War pavers and memorials.</p> <p>*<i>The Sanctuary</i> statue located at Hawkshaw Lagoon. This is a memorial to missing children.</p> <p>*Tribute to the Men of Escambia County Who Served the United State of America and the Allies in the World War 1914-1918.</p> <p>*Bronze donor plaque recognizing the people and organizations that made the WWII Memorial possible.</p> <p>*Statues of WWII Servicemen.</p> <p>*Inspirational signage.</p> <p>*Bench dedicated to POW-MIA.</p> <p>*Commemorative bench – United States Navy.</p> <p>*Commemorative bench – United States Civilians</p> <p>*Commemorative bench – United States Air Force.</p> <p>*Replica of Vietnam Veterans Memorial Wall.</p> <p>*Monument to Submarine Lifeguard League which was tasked with saving the lives of Airmen from 1943 – 1945.</p> <p>*Bronze Veterans Memorial Park Information plaque.</p>
89.VICTORY PARK # 1	1801 N. Reus St.	0.15		
90.VICTORY PARK # 2	1301 N. Devilliers St.	0.43		


Park Name	Location	Acres	Date Established/Historical/Cultural significance	Monuments in Park and Significance
91.WAYSIDE PARK EAST	1401 E. Gregory St.	18.0	<b>1943</b> This park is dedicated to Mrs. Dora Bayless; it was sponsored by the Junior Chamber of Commerce, Lions Club, Rotary Club, Angler's Club and was erected by the State Road Department and the City of Pensacola.	*Bronze plaque dedicated to Mrs. Dora C. Bayless erected in 1943. *Bronze plaque signifying Military Appreciation Rose Garden – 2004. *Marker signifying Emanuel Point Shipwrecks which occurred shortly after colonists arrived in Pensacola with Don Tristan De Luna in 1559. He brought 11 ships and 1000 colonists to establish the colony, but a month later a powerful hurricane struck and most of the ships were lost.
93.WOODCLIFF PARK	4701 Balmoral Dr.	4.6	Woodcliff Park is named for the neighborhood in which it is located.	
94.WYER PARK (Henry T.)	320 W. Belmont St.	0.67	<b>c. 1993</b> Henry T. Wyer was a longtime advocate for the Belmont-Devilliers area. On August 2, 1991, the City Manager, Rod Kendig appointed him to the recently reestablished Belmont Devilliers Redevelopment Board. Prior to this appointment, Wyer had served on the Neighborhood Council. He took his Oath of Office on October 30, 1991, and became an official member of the Board and served on the Belmont-Devilliers Cultural Committee. On December 15, 1992 the main item on the Belmont-Devilliers Redevelopment Board's agenda was the discussion of a proposed layout for the neighborhood park that the Board had been planning. The park had yet to be named. It was later stated that the park was named after Henry T. Wyer because of his constant support of the neighborhood.	
95.ZAMORA SQUARE	1800 E. Bobe St.	2.4	Zamora Square is one of the city's oldest squares, having been laid out and appearing on maps from the 1800's.	

## **ADDENDUM 2**


## Cross Displays on Public Property


Name	Date Placed on Public Land	Location	Picture and Citation
Cross Mountain Cross	1849 (replaced 1946)	Cross Mountain Park, Fredericksburg, TX	 <p><i>Cross Mountain</i>, The Historical Marker Database, <a href="http://tinyurl.com/yd2zywkp">http://tinyurl.com/yd2zywkp</a> (last modified June 16, 2016); see also <i>Cross Mountain Park</i>, The City of Fredericksburg, Tex., <a href="http://tinyurl.com/y9344ym4">http://tinyurl.com/y9344ym4</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Chapel of the Centurion	1858 (transferred to private ownership 2011)	Fort Monroe, Hampton, VA	 <p data-bbox="1024 1052 1871 1170"><i>Chapel of the Centurion</i>, Order of the Centurion, <a href="http://tinyurl.com/y9zr89hn">http://tinyurl.com/y9zr89hn</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
San Buenaventura Mission Cross	1782 (Spanish), replaced in 1860s and 1912 (transferred to private ownership 2003)	Grant Park, Ventura, CA	 <p><i>San Buenaventura Mission Cross</i>, The Historical Marker Database, <a href="http://tinyurl.com/ya7a5ywe">http://tinyurl.com/ya7a5ywe</a> (last modified June 16, 2016).</p>





Name	Date Placed on Public Land	Location	Picture and Citation
Confederate Soldiers Monument	1868	Cross Creek Cemetery, Fayetteville, NC	 <p><i>Confederate Monument at Cross Creek Cemetery, Fayetteville Area Convention and Visitors Bureau, <a href="http://tinyurl.com/ydze5bzw">http://tinyurl.com/ydze5bzw</a> (last visited Sept. 25, 2017); see also N.C. Dep't of Cultural Res., Fayetteville, N.C. Civil War Monuments, <a href="http://tinyurl.com/yd9mfmbj">http://tinyurl.com/yd9mfmbj</a> (last visited Sept. 25, 2017).</i></p>

Name	Date Placed on Public Land	Location	Picture and Citation
Monument to Co. D., 30th Ohio Volunteer Regiment	1876	Monument Square Park, New Lexington, OH	 <p data-bbox="1024 966 1881 1089"><i>Monument Square Park, Perry Cty., Ohio,</i>  <a href="http://tinyurl.com/y6wug43k">http://tinyurl.com/y6wug43k</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Irish Brigade Monument	1888	Gettysburg National Military Park, Gettysburg, PA	 <p><i>Irish Brigade Monument at Gettysburg, Stone Sentinels, <a href="http://tinyurl.com/yalqysfa">http://tinyurl.com/yalqysfa</a> (last visited Sept. 25, 2017)</i></p>


Name	Date Placed on Public Land	Location	Picture and Citation
Jeannette Monument	1890	United States Naval Academy Cemetery, Annapolis, MD	 <p><i>Jeannette Arctic Expedition Memorial at the U.S. Naval Academy in Maryland</i>, DCMemorials.com, <a href="http://tinyurl.com/ybv2axl4">http://tinyurl.com/ybv2axl4</a> (last modified Apr. 20, 2013); see also <i>Jeannette Monument</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/yb382yxm">//tinyurl.com/yb382yxm</a> (last visited Sept. 25, 2017).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Horse Fountain Cross	1898	Lancaster, PA	 <p data-bbox="1024 1117 1871 1289"><i>Ho! Every One That Thirsteth</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://ti-nyurl.com/ybm75cn">http://ti-nyurl.com/ybm75cn</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Father Serra Celtic Cross	1908	Monterey, CA	 <p data-bbox="1024 971 1892 1141"><i>Serra Landing</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/ya9jbkph">http://tinyurl.com/ya9jbkph</a> (last visited Sept. 25, 2017).</p>





Name	Date Placed on Public Land	Location	Picture and Citation
French Cross	After 1918	Cypress Hills National Cemetery, Brooklyn, NY	 <p data-bbox="1024 1206 1892 1333"><i>Cypress Hills National Cemetery</i>, Nat'l Park Serv., <a href="http://tinyurl.com/y88zdbqr">http://tinyurl.com/y88zdbqr</a> (last visisted Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
American Overseas Commemorative Cemeteries and Memorials	Beginning 1923	25 U.S.-owned sites throughout the world, including in France, the U.K., and the Philippines	 <p data-bbox="1020 850 1755 977">American Battle Monuments Commission, <i>Commemorative Sites Booklet</i>, ABMC.gov, <a href="http://tinyurl.com/y83mfuna">http://tinyurl.com/y83mfuna</a> (Jan. 2017).</p>





Name	Date Placed on Public Land	Location	Picture and Citation
Wayside Cross	1923	New Canaan, CT	 <p data-bbox="1024 915 1772 1044">Dave Pelland, <i>Wayside Cross, New Canaan</i>, CTMonuments.net (July 8, 2011), <a href="http://ti-nyurl.com/y7sd8ssv">http://ti-nyurl.com/y7sd8ssv</a>.</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Argonne Cross Memorial	1923	Arlington National Cemetery, Arlington, VA	 <p data-bbox="1020 966 1885 1138"><i>Argonne Cross (WWI)</i>, Arlington National Cemetery (Oct. 7, 2015), <a href="http://tinyurl.com/ycxelus6">http://tinyurl.com/ycxelus6</a>; see also <i>The Argonne Cross Memorial</i>, The Am. Legion (Feb. 3, 2017), <a href="http://tinyurl.com/yd95lrjh">http://tinyurl.com/yd95lrjh</a>.</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Memorial Peace Cross	1925	Bladensburg, MD	 <p><i>Peace Cross: “This Memorial Cross”, The Historical Marker Database, <a href="http://tinyurl.com/yabjo735">http://tinyurl.com/yabjo735</a> (last modified June 16, 2016); see also <i>Memorial Peace Cross</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/y8rh9d7u">http://tinyurl.com/y8rh9d7u</a> (last visited Sept. 25, 2017).</i></p>


Name	Date Placed on Public Land	Location	Picture and Citation
Father Millet Cross	1926	Old Fort Niagra State Park, NY	 <p data-bbox="1018 893 1869 1104">Bob Janiskee, <i>Pruning the Parks: Father Millet Cross National Monument, 1925-1949, Was the Smallest National Monument Ever Established</i>, National Parks Traveler (Sept. 4, 2009), <a href="http://ti-nyurl.com/ycxocthh">http://ti-nyurl.com/ycxocthh</a>.</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Canadian Cross of Sacrifice	1927	Arlington National Cemetery, Arlington, VA	 <p data-bbox="1024 943 1877 1070"><i>Canadian Cross of Sacrifice (WWI/WWII/Korea), Arlington National Cemetery, <a href="http://ti-nyurl.com/zkvrpyy">http://ti-nyurl.com/zkvrpyy</a> (last visited Sept. 25, 2017).</i></p>


Name	Date Placed on Public Land	Location	Picture and Citation
War Memorial, Cross of Gray	1929	Town Hall, Weymouth, MA	 <p data-bbox="1024 1170 1885 1341"><i>The War Memorial</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/y9aq52l6">http://tinyurl.com/y9aq52l6</a> (last visited Sept. 25, 2017)</p>

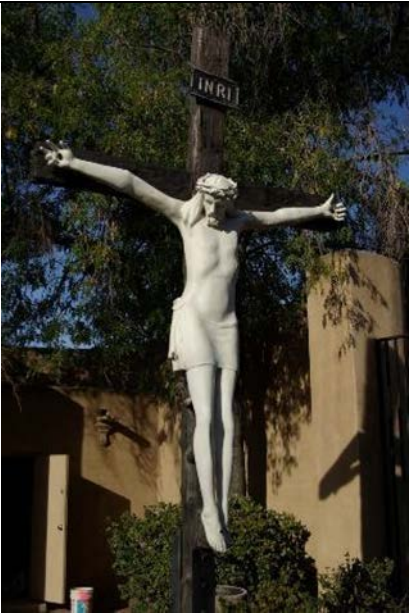



Name	Date Placed on Public Land	Location	Picture and Citation
The Rustic Cross	1929	In the median on Greene Street, Augusta, GA	 <p data-bbox="1024 933 1885 1107"><i>The Rustic Cross</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/ybdzl547">http://tinyurl.com/ybdzl547</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Canby's Cross	Before 1933	The Lava Beds National Monument, Tulelake, CA	 <p data-bbox="1020 914 1896 1177"><i>Canby's Cross</i>, The Historical Marker Database, <a href="http://tinyurl.com/yb29qa6f">http://tinyurl.com/yb29qa6f</a> (last modified June 16, 2016); <i>see also</i> Office of Historic Preservation, <i>Canby's Cross-1873</i>, Cal. State Parks, <a href="http://ohp.parks.ca.gov/ListedResources/Detail/110">http://ohp.parks.ca.gov/ListedResources/Detail/110</a> (last visited Sept. 25, 2017).</p>





Name	Date Placed on Public Land	Location	Picture and Citation
Celtic Cross, Monument to Oglethorpe	1933	Queen Square, Brunswick, GA	 <p data-bbox="1020 980 1885 1149"><i>Monument to James Edward Oglethorpe</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://ti-nyurl.com/y9pm38jp">http://ti-nyurl.com/y9pm38jp</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Garden of Gethsemane: Crucifix (one of five religious statues)	1948	Felix Lucero Park, Tucson, AZ	 <p data-bbox="1024 1027 1856 1200"><i>Garden of Gethsemane: Crucifix</i>, Art Inventories Catalog, Smithsonian American Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://ti-nyurl.com/y8ct67nq">http://ti-nyurl.com/y8ct67nq</a> (last visited Sept. 25, 2017).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Kauhako Crater Cross	1947	Kalaupapa National Historical Park, HI	 <p data-bbox="1024 1073 1871 1156"><i>Kauhako Crater Cross</i>, Nat'l Park Serv. (May 29, 2014), <a href="http://tinyurl.com/y7fz83sw">http://tinyurl.com/y7fz83sw</a>.</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Cape La Croix Cross	1947	Cape Girardeau, MO	 <p data-bbox="1020 1065 1885 1239"><i>Cape La Croix Creek Marker</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://ti-nyurl.com/ycfuylxx">http://ti-nyurl.com/ycfuylxx</a> (last visited Sept. 25, 2017).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Father Padilla's Cross	1950	Along U.S. 56, west of Lyons, KS	 <p data-bbox="1020 1036 1881 1205"><i>Father Padilla's Cross</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/y8cdgakx">http://tinyurl.com/y8cdgakx</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Cannon County War Memorial	1950	Main St., Woodbury, TN	 <p data-bbox="1024 930 1860 1058"><i>War Memorial Cannon County, Traces of War, <a href="http://tinyurl.com/y9bhc7l2">http://tinyurl.com/y9bhc7l2</a> (last visited Sept. 25, 2017).</i></p>


Name	Date Placed on Public Land	Location	Picture and Citation
Portola Crespi Cross	1953 (blew down and re-erected in 1983)	Carmel Beach State Park, Monterey, CA	 <p data-bbox="1020 1019 1885 1144"><i>Portola Crespi Cross</i>, The Historical Marker Database, <a href="http://tinyurl.com/yazqok94">http://tinyurl.com/yazqok94</a> (last modified June 16, 2016).</p>




Name	Date Placed on Public Land	Location	Picture and Citation
Camp Pendleton Cross (“La Christianita”)	c. 1957	Camp Pendleton, San Diego, CA	 <p data-bbox="1024 915 1850 1083">Lance Cpl. Mike Atchue, <i>California’s First Baptism Held at Pendleton</i>, Marines: The Official Website of the U.S. Marine Corps (Feb. 5, 2010), <a href="http://tinyurl.com/ya9bdexm">http://tinyurl.com/ya9bdexm</a>.</p>





Name	Date Placed on Public Land	Location	Picture and Citation
Pensacola Beach Cross	c. 1959	Pensacola Beach, FL	 <p data-bbox="1020 922 1875 1089">Drew Buchanan, <i>Settlement of Pensacola Marked the “Beginning of Christianity” in America</i>, The Pulse (Apr. 24, 2016), <a href="https://ti-nyurl.com/ydhyy474">https://ti-nyurl.com/ydhyy474</a>.</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Seaman's / Aransas Pass Memorial Tower with crucifix	1970	Conn Brown Harbor Park, Aransas Pass, TX	 <p data-bbox="1020 906 1885 1036"><i>Aransas Pass Memorial Tower</i>, Collections Search Center, Smithsonian Inst., <a href="http://ti.nyurl.com/y9bk4dly">http://ti-nyurl.com/y9bk4dly</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Pioneer Family with Cross	1976	Victoria, KS	 <p data-bbox="1024 987 1850 1157"><i>Pioneer Family</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/ydg9pamg">http://tinyurl.com/ydg9pamg</a> (last visited Sept. 25, 2017).</p>


Name	Date Placed on Public Land	Location	Picture and Citation
Cross of the Martyrs	1977	Hillside Park, Santa Fe, NM	 <p data-bbox="1020 959 1896 1221">Amy Behm, <i>Santa Fe Travel—Historic Sites: The Cross of the Martyrs</i>, Pueblo Bonito Bed &amp; Breakfast Inn (Apr. 30, 2015), <a href="http://ti-nyurl.com/y9abjy9k">http://ti-nyurl.com/y9abjy9k</a>; see also Camille Flores, <i>Santa Fe Icons: 50 Symbols of the City Different</i> 84 (2010).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
The Irish Monument	Dedicated 1984	Emmet Park, Savannah, GA	 <p data-bbox="1024 1127 1881 1299"><i>The Irish Monument</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/ydfjnskp">http://tinyurl.com/ydfjnskp</a> (last visited Sept. 25, 2017).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Irish Cross	Before 1994	Jordan Park, International Peace Gardens, Salt Lake City, UT	 <p data-bbox="1020 1081 1885 1252"><i>Irish Cross</i>, Art Inventories Catalog, Smithsonian Am. Art Museum, Smithsonian Inst. Research Info. Sys., <a href="http://tinyurl.com/ybp3kww4">http://tinyurl.com/ybp3kww4</a> (last visited Sept. 25, 2017).</p>





Name	Date Placed on Public Land	Location	Picture and Citation
Confederate Soldiers Monument	2001	Middletown, NC	 <p data-bbox="1020 963 1871 1269">N.C. Dep't of Cultural Res., <i>Confederate Soldiers Monument</i>, N.C. Civil War Monuments, <a href="http://tinyurl.com/yb5d6gn5">http://tinyurl.com/yb5d6gn5</a> (last visited Sept. 25, 2017); see also UNC Univ. Libraries, <i>Confederate Soldiers Monument, Middletown</i>, Commemorative Landscapes, <a href="http://tinyurl.com/y7jpkaq4">http://tinyurl.com/y7jpkaq4</a> (last visited Sept. 25, 2017).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Woodbridge Avenue Memorial	Updated with cross in 2002	Ansonia, CT	 <p data-bbox="1020 959 1881 1081"><i>Ansonia, CT Veterans' Memorials</i>, Ansonia Civil War Soldiers' Monument (May 11, 2010), <a href="http://ti-nyurl.com/yavnqrus">http://ti-nyurl.com/yavnqrus</a>.</p>



Name	Date Placed on Public Land	Location	Picture and Citation
Las Cruces City Symbol (three crosses within a sun)	2003	City Hall, Las Cruces, NM	 <p data-bbox="1020 1073 1896 1156">City of Las Cruces, <a href="http://www.las-cruces.org/">http://www.las-cruces.org/</a> (last visited Sept. 25, 2017).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Veterans Memorial Plaza	2006	David Webb Riverfront Park, Harriman, TN	 <p><i>Veterans Memorial Plaza Harriman, Traces of War</i>, <a href="http://tinyurl.com/yaog2odm">http://tinyurl.com/yaog2odm</a> (last visited Sept. 25, 2017).</p>

Name	Date Placed on Public Land	Location	Picture and Citation
Jefferson County Veterans Memorial	2011	Courthouse lawn, Mount Vernon, IL	 <p><i>Jefferson County Veterans Memorial—Mount Vernon, IL, Waymarking.com, <a href="http://ti-nyurl.com/y9clrllw">http://ti-nyurl.com/y9clrllw</a> (last visited Sept. 25, 2017).</i></p>