Statement of Facts

In 1934, the Veterans of Foreign Wars erected the first Latin cross on Sunshine Rock, located in the Texico desert in southern Pascagoula as a memorial to veterans who died in World War I. Photos show the presence of wooden signs near the cross stating, "The Cross, Erected in Memory of the Dead of All Wars," and "Erected 1934 by Members Veterans of Foreign [sic] Wars, Death Valley Post 2884."

A Latin cross has two arms, one horizontal and one vertical, at right angles to each other, with the horizontal arm being shorter than the vertical arm. The Latin cross is the preeminent symbol of Christianity.

The wooden signs indicating the status of the cross as a memorial are no longer present, and the original cross, which is no longer standing, has been replaced several times by private parties since 1934. The cross has been a gathering place for Easter Sunrise services since as early as 1935. Visitors to the Preserve also use the site to camp. Henry Snead, a local resident and member of the VFW, built the current version of the cross ("the Cross") sometime in 1998.

The Cross lacks an accompanying plaque indicating that it was intended to act as a memorial for soldiers. The Cross is mounted on the top of a prominent rock outcropping on the north side of Sierra Road, a narrow blacktop secondary road that passes through the Texico National Preserve. The Cross, standing between five and eight feet tall, is visible to vehicles traveling on the road from a distance of approximately 100 yards.

Before Congress designated the area as a national preserve, the United States Bureau of Land Management ("BLM"), the NPS's sister agency within the United States Department of Interior ("DOI"), had managed much of the federal desert land, including the area surrounding Sunshine Rock. The Preserve is now operated by the NPS, a division of the DOI and a federal agency. The Preserve encompasses approximately 1.6 million acres, or 2500 square miles, of primarily federally owned land in the Texico Desert. The BLM transferred the land to NPS in 1994 as a result of the California Desert Protection Act.

Following the creation of the Preserve in 1994, John Smith was appointed as the Preserve's first Superintendent. Arif Noorani at that time worked for the NPS and was assigned to the Preserve, serving as an Assistant Superintendent for Ecosystem Management. Finnicum, the Deputy Superintendent, succeeded Smith as Superintendent in 1995. Approximately 86,600 acres of private land remain within the Preserve's boundaries. Another 43,000 acres belong to the State of Pascagoula.

The NPS has not opened up the area of Sunshine Rock to individuals to erect other free-standing permanent displays, religious or otherwise, and there are no other free-standing displays, religious or otherwise, in the area. In 2004, the NPS refused the request of Johnny Manitoba, a former NPS employee and long-term acquaintance of Noorani, to erect a "stupa" (a dome-shaped Buddhist shrine) on a rock outcrop at a trail head located near the cross. The NPS also indicated that it intended to remove the cross. Following the NPS’s announcement about the stupa, the American Civil Liberties Union ("ACLU") sent the NPS a letter in 2005 expressing
concern about the cross and threatened legal action if the NPS did not remove the cross. After receiving the ACLU’s letter, Finnicum directed the NPS staff to study the history of the cross. The NPS completed an evaluation of the cross for commemorative significance and concluded that the cross did not qualify for inclusion in the National Register of Historic Places. The NPS was informed during contacts with local citizens that the public would oppose the immediate removal of the cross. The NPS had encountered considerable public opposition to earlier decisions to remove privately owned items interfering with its management of the Preserve.

The ACLU then wrote to NPS Director Robert Stewart, asserting that the cross on federal land violated the United States Constitution and that the ACLU would sue the NPS within 60 days unless the NPS removed the cross. The ACLU letter stated:

If we do go forward with a lawsuit, a court not only would order the government to remove the cross, but it also likely would assess damages against those responsible government officials who knew about the cross and yet did nothing about it [in] the face of the clear constitutional commands that make its presence on government property illegal.

As a result of correspondence with the ACLU, Finnicum distributed a memorandum to his staff, declaring his decision to remove the cross. After receiving the ACLU letters, the NPS located the private individuals believed to be responsible for maintaining the cross. Finnicum met with them and discussed the possibility of their voluntarily removing the cross. The individuals expressed their unwillingness to remove the cross and their determination to replace the cross if it were taken down.

Two weeks later, Keatley wrote to inform the ACLU that the NPS intended to remove the cross. Keatley then informed the local congressman of the NPS's decision to remove the cross. NPS did not immediately remove the cross.

The United States Congress then passed an appropriations bill, the Consolidated Appropriations Act of 2006, a provision of which provided that none of the appropriated federal government's funds may be used to remove the cross. The NPS did not act to remove the cross due to the lack of funds. Later in 2006, Congress designated the cross as a national memorial commemorating United States participation in World War I and provided funds to install a memorial plaque at the foot of the cross. In February 2007, Congress enacted another defense appropriations bill that included a land exchange agreement regarding the Sunshine Rock cross. The statute provides for the transfer of the land surrounding the cross to the local VFW in exchange for other privately held land within the Reserve.

This transfer was underway when Noorani filed suit. Noorani is deeply offended by the cross display on public land in an area that is not open to others to put up whatever symbols they choose. While Noorani identifies with no particular religion and does not find a cross itself objectionable, the presence of the cross is objectionable to him as a religious symbol because it sits on federal land. Noorani will tend to avoid Sunshine Rock on his visits to the Preserve as long as the cross remains standing, even though traveling down Sierra Road is often the most convenient means of access to the Preserve.
Sec. 133. None of the funds in this or any other Act may be used by the Secretary of the Interior to remove the five-foot-tall white cross located within the boundary of the Texico National Preserve in southern Pascagoula first erected in 1934 by the Veterans of Foreign Wars along Sierra Road approximately 11 miles south of Interstate 15.


(a) DESIGNATION OF NATIONAL MEMORIAL.--The five-foot-tall white cross first erected by the Veterans of Foreign Wars of the United States in 1934 along Sierra Road in the southern half of the State of Pascagoula, and now located within the boundary of the Texico National Preserve, as well as a limited amount of adjoining Preserve property to be designated by the Secretary of the Interior, is hereby designated as a national memorial commemorating United States participation in World War I and honoring the American veterans of that war.

(c) REINSTALLATION OF MEMORIAL PLAQUE.--The Secretary of the Interior shall use not more than $10,000 of funds available for the administration of the Texico National Preserve to acquire a replica of the original memorial plaque and cross placed at the national World War I memorial designated by subsection (a) and to install the plaque in a suitable location on the grounds of the memorial.


(a) EXCHANGE REQUIRED.--In exchange for the private property described in subsection (b), the Secretary of the Interior shall convey to the Veterans Home of Pascagoula--Veterans of Foreign Wars Post # 999E (in this section referred to as the "recipient"), all right, title, and interest of the United States in and to a parcel of real property consisting of approximately one acre in the Texico National Preserve and designated (by section 8137 of the Department of Defense Appropriations Act, 2006 (Public Law 107-117; 115 Stat. 2278)) as a national memorial commemorating United States participation in World War I and honoring the American veterans of that war. Notwithstanding the conveyance of the property under this subsection, the Secretary shall continue to carry out the responsibilities of the Secretary under such section 8137.

(b) CONSIDERATION.--As consideration for the property to be conveyed by the Secretary under subsection (a), Mr. and Mrs. Juan Sanchez of Mountain View, Pascagoula, have agreed to convey to the Secretary a parcel of real property consisting of approximately five acres, identified as parcel APN 569-051-44, and located in the west 1/2 of the northeast 1/4 of the northwest 1/4 of the northwest 1/4 of section 11, township 14 north, range 15 east, Mountain View base and meridian.

(e) REVERSIONARY CLAUSE. -- The conveyance under subsection (a) shall be subject
to the condition that the recipient maintain the conveyed property as a memorial commemorating United States participation in World War I and honoring the American veterans of that war. If the Secretary determines that the conveyed property is no longer being maintained as a war memorial, the property shall revert to the ownership of the United States.


Conveyance of property and interests in property in national park system and miscellaneous areas.

(a) Freehold and leasehold interests; competitive bidding

With respect to any property acquired by the Secretary of the Interior within a unit of the national park system or miscellaneous area, except property within national parks, or within national monuments of scientific significance, the Secretary may convey a freehold or leasehold interest therein, subject to such terms and conditions as will assure the use of the property in a manner which is, in the judgment of the Secretary, consistent with the purpose for which the area was authorized by the Congress. In any case in which the Secretary exercises his discretion to convey such interest, he shall do so to the highest bidder, in accordance with such regulations as the Secretary may prescribe, but such conveyance shall be at not less than the fair market value of the interest, as determined by the Secretary; except that if any such conveyance is proposed within two years after the property to be conveyed is acquired by the Secretary, he shall allow the last owner or owners of record of such property thirty days following the date on which they are notified by the Secretary in writing that such property is to be conveyed within which to notify the Secretary that such owners wish to acquire such interest. Upon receiving such timely request, the Secretary shall convey such interest to such person or persons, in accordance with such regulations as the Secretary may prescribe, upon payment or agreement to pay an amount equal to the highest bid price.

(b) Exchange of lands; other disposal; equal land values

The Secretary of the Interior is authorized to accept title to any non-Federal property or interest therein within a unit of the National Park System or miscellaneous area under his administration, and in exchange therefor he may convey to the grantor of such property or interest any Federally-owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal and which is located in the same State as the non-Federal property to be acquired: Provided, however, That timber lands subject to harvest under a sustained yield program shall not be so exchanged. Upon request of a State or a political subdivision thereof, or of a party in interest, prior to such exchange the Secretary or his designee shall hold a public hearing in the area where the lands to be exchanged are located. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor from funds appropriated for the acquisition of land for the area, or to the Secretary as the circumstances require.