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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**SALAZAR, SECRETARY OF THE INTERIOR, ET AL. v.
BUONO****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 08–472. Argued October 7, 2009—Decided April 28, 2010

In 1934, members of the Veterans of Foreign Wars (VFW) placed a Latin cross on federal land in the Mojave National Preserve (Preserve) to honor American soldiers who died in World War I. Claiming to be offended by a religious symbol's presence on federal land, respondent Buono, a regular visitor to the Preserve, filed this suit alleging a violation of the First Amendment's Establishment Clause and seeking an injunction requiring the Government to remove the cross. In the litigation's first stage (*Buono I*), the District Court found that Buono had standing to sue and, concluding that the presence of the cross on federal land conveyed an impression of governmental endorsement of religion, see *Lemon v. Kurtzman*, 403 U. S. 602, 612–613, it granted Buono's requested injunctive relief (2002 injunction). The District Court did not consider whether the Government's actions regarding the cross had a secular purpose or caused entanglement with religion. While the Government's appeal was pending, Congress passed the Department of Defense Appropriations Act, 2004, §8121(a) of which directed the Secretary of the Interior to transfer the cross and the land on which it stands to the VFW in exchange for privately owned land elsewhere in the Preserve (land-transfer statute). Affirming the District Court's judgment both as to standing and on the merits, the Ninth Circuit declined to address the statute's effect on Buono's suit or the statute's constitutionality (*Buono II*). Because the Government did not seek review by this Court, the Court of Appeals' judgment became final. Buono then returned to the District Court seeking injunctive relief against the land transfer, either through enforcement or modification of the 2002 injunction. In 2005, that court rejected the Government's claim that

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the transfer was a bona fide attempt to comply with the injunction, concluding, instead, that it was actually an invalid attempt to keep the cross on display. The court granted Buono’s motion to enforce the 2002 injunction; denied as moot his motion to amend it; and permanently enjoined the Government from implementing the land-transfer statute (*Buono III*). The Ninth Circuit again affirmed, largely following the District Court’s reasoning.

Held: The judgment is reversed, and the case is remanded.

502 F. 3d 1069 and 527 F. 3d 758, reversed and remanded.

JUSTICE KENNEDY, joined in full by THE CHIEF JUSTICE and in part by JUSTICE ALITO, concluded:

1. Buono has standing to maintain this action. Whatever the validity of the Government’s argument that Buono’s asserted injury—offense at a religious symbol’s presence on federal land—is not personal to him and so does not confer Article III standing, that argument is not available at this stage of the litigation. The District Court rejected the argument in *Buono I*, the Ninth Circuit affirmed in *Buono II*, and the Court of Appeals’ judgment became final and unreviewable upon the expiration of the 90-day deadline for filing a certiorari petition, 28 U. S. C. §2101(c). Moreover, Buono had standing in *Buono III* to seek application of the injunction against the land-transfer statute. A party that obtains a judgment in its favor acquires a “judicially cognizable” interest in ensuring compliance with that judgment. See *Allen v. Wright*, 468 U. S. 737. Buono’s entitlement to an injunction having been established in *Buono I* and *II*, he sought in *Buono III* to prevent the Government from frustrating or evading that injunction. His interests in doing so were sufficiently personal and concrete to support his standing, given the rights he obtained under the earlier decree against the same party as to the same cross and the same land. The Government’s contention that Buono sought to extend, rather than to enforce, the 2002 injunction is not an argument about standing, but about the merits of the District Court’s order. Pp. 7–9.

2. The District Court erred in enjoining the Government from implementing the land-transfer statute on the premise that the relief was necessary to protect Buono’s rights under the 2002 injunction. Pp. 9–18.

(a) A court may order an injunction only after taking into account all the circumstances bearing on the need for prospective relief. See, e.g., *United States v. Swift & Co.*, 286 U. S. 106, 114. Here, the District Court did not engage in the appropriate inquiry. The land-transfer statute was a substantial change in circumstances bearing on the propriety of the requested relief. By dismissing as illicit the motives of Congress in passing it, the District Court took insufficient

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account of the context in which the statute was enacted and the reasons for its passage. Placement of the cross on federal land by private persons was not an attempt to set the state's *imprimatur* on a particular creed. Rather, the intent was simply to honor fallen soldiers. Moreover, the cross stood for nearly seven decades before the statute was enacted, by which time the cross and the cause it commemorated had become entwined in the public consciousness. The 2002 injunction thus presented the Government with a dilemma. It could not maintain the cross without violating the injunction, but it could not remove the cross without conveying disrespect for those the cross was seen as honoring. Deeming neither alternative satisfactory, Congress enacted the land-transfer statute. The statute embodied a legislative judgment that this dispute is best resolved through a framework and policy of accommodation. The statute should not have been dismissed as an evasion, for it brought about a change of law and a congressional statement of policy applicable to the case. Pp. 9–13.

(b) Where legislative action undermines the basis for previous relief, the relevant question is whether an ongoing exercise of the court's equitable authority is supported by the prior showing of illegality, judged against the claim that changed circumstances render prospective relief inappropriate. The District Court granted the 2002 injunction based solely on its conclusion that the presence of the cross on federal land conveyed an impression of governmental endorsement of religion, and the Ninth Circuit affirmed on the same grounds. Neither court considered whether the Government had acted based on an improper purpose. Given this sole reliance on perception, any further relief grounded on the injunction should have rested on the same basis. But the District Court used an injunction granted for one reason (perceived governmental endorsement) as the basis for enjoining conduct that was alleged to be objectionable for a different reason (an illicit governmental purpose). Ordering relief under such circumstances was improper. The court failed to consider whether the change in law and circumstances effected by the land-transfer statute had rendered the "reasonable observer" standard inappropriate to resolve the dispute. Nor did the court attempt to reassess *Buono Is* findings in light of the accommodation policy embraced by Congress. Rather, it concentrated solely on the religious aspects of the cross, divorced from its background and context. Pp. 13–17.

(c) The same respect for a coordinate branch of Government that forbids striking down an Act of Congress except upon a clear showing of unconstitutionality, see, e.g., *United States v. Morrison*, 529 U. S. 598, 607, requires that a congressional command be given effect unless no legal alternative exists. Even if, contrary to the congres-

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sional judgment, the land transfer were thought an insufficient accommodation in light of the earlier endorsement finding, it was incumbent upon the District Court to consider less drastic relief than complete invalidation of the statute. See, e.g., *Ayotte v. Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 329. On remand, that court should conduct a proper inquiry into the continued necessity for injunctive relief in light of the statute. Pp. 17–18.

JUSTICE ALITO concluded that this case should not be remanded for the lower courts to decide whether implementation of the land-transfer statute would violate the District Court’s injunction or the Establishment Clause. Rather, because the factual record has been sufficiently developed to permit resolution of these questions, he would decide them and hold that the statute may be implemented. The case’s singular circumstances presented Congress with a delicate problem. Its solution was an approach designed to eliminate any perception of religious sponsorship stemming from the location of the cross on federally owned land, while avoiding the disturbing symbolism that some would associate with the destruction of this historic monument. The mechanism Congress selected is quite common in the West, a “land exchange,” whereby ownership of the land on which the cross is located would be transferred to the VFW in exchange for another nearby parcel of equal value. The land transfer would not violate the District Court injunction, the obvious meaning of which was simply that the Government could not allow the cross to remain on *federal* land. Nor would the statute’s implementation constitute an endorsement of religion in violation of the Establishment Clause. The so-called “endorsement test” views a challenged religious display through the eyes of a hypothetical reasonable observer aware of the history and all other pertinent facts relating to the display. Here, therefore, this observer would be familiar with the monument’s origin and history and thereby appreciate that the transfer represents an effort by Congress to address a unique situation and to find a solution that best accommodates conflicting concerns. Finally, the statute was not enacted for the illicit purpose of embracing the monument’s religious message but to commemorate the Nation’s war dead and to avoid the disturbing symbolism that would have been created by the monument’s destruction. Pp. 1–7.

JUSTICE SCALIA, joined by JUSTICE THOMAS, concluded that this Court need not—indeed, *cannot*—decide this case’s merits because Buono lacks Article III standing to pursue the relief he seeks, which is not enforcement of the original injunction but expansion of it. By enjoining the Government from implementing the statute at issue, the District Court’s 2005 order went well beyond the original injunction’s proscription of the cross’s display on public property. Because

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Buono seeks new relief, he must show that he has standing to pursue that relief by demonstrating that blocking the land transfer will “redress or prevent an actual or imminently threatened injury to [him] caused by private or official violation of law.” *Summers v. Earth Island Institute*, 555 U. S. ___, ___. He has failed, however, to allege any such injury. Even assuming that being offended by a religious display constitutes a cognizable injury, it is merely speculative whether the cross will remain in place, and in any event Buono has made clear, by admitting he has no objection to Christian symbols on private property, that *he* will not be offended. Neither district courts’ discretion to expand injunctions they have issued nor this District Court’s characterization of its 2005 order as merely enforcing the existing injunction makes any difference. If in fact a court awards new relief, it must have Article III jurisdiction to do so. Pp. 1–7.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., joined, and in which ALITO, J., joined in part. ROBERTS, C. J., filed a concurring opinion. ALITO, J., filed an opinion concurring in part and concurring in the judgment. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined. STEVENS, J., filed a dissenting opinion, in which GINSBURG and SOTOMAYOR, JJ., joined. BREYER, J., filed a dissenting opinion.