

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JANE FELIX, and
B.N. COONE,

Plaintiffs,

vs.

CIVIL No. _____

THE CITY OF BLOOMFIELD, NEW MEXICO, A MUNICIPAL CORPORATION;
SCOTT ECKSTEIN, MAYOR OF THE CITY OF BLOOMFIELD, NEW MEXICO;
MATT PENNINGTON, A MEMBER OF THE BLOOMFIELD CITY COUNCIL;
CURTIS LYNCH, A MEMBER OF THE BLOOMFIELD CITY COUNCIL; AND
PAT LUCERO, A MEMBER OF THE BLOOMFIELD CITY COUNCIL,

Defendants.

COMPLAINT

Plaintiffs, for their Complaint and cause of action against the Defendants, by and through counsel, state and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for declaratory relief and prospective injunctive relief to redress and prevent violation of civil rights protected by the Constitutions of the United States and the State of New Mexico. Plaintiffs seek declaratory relief as to the unconstitutionality of Defendants' conduct. Plaintiffs seek injunctive relief prohibiting Defendants from continuing their misconduct and from engaging in similar conduct in the future. Plaintiffs each seek nominal damages of one dollar (\$1.00) based upon the federal claims herein. Plaintiffs seek attorney fees and court costs pursuant to 42 U.S.C. § 1983 and § 1988

JURISDICTION & VENUE

2. Jurisdiction is based on 28 U.S.C. § 1343 and 42 U.S.C. § 1983 for claims arising under the United States Constitution. Declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by the United States Code and Rule 65 of the Federal Rules of Civil Procedure. This court has supplemental or pendent jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims under the New Mexico Constitution which arise out of the same fact situation.
3. All of the conduct complained of occurred, is occurring or will occur in the District of New Mexico. The named individual Defendants to this action reside in the District of New Mexico.
4. This action seeks to redress the deprivation of rights secured by the United States Constitution and the Constitution of the State of New Mexico.

PARTIES

5. Plaintiff Jane Felix is an adult citizen and resident of the City of Bloomfield, New Mexico. She is offended by the placement of the Ten Commandments Monument on the lawn of the Bloomfield City Hall. She is a municipal taxpayer. She resides approximately 1 ½ miles from Bloomfield City Hall and frequently goes to the Bloomfield City Hall or drives past it where she inevitably encounters the Ten Commandments Monument. Thus, she has regular, direct contact with the Monument. She believes that the Monument represents only one religious point of view and therefore sends a message of exclusion to those who do not adhere to that particular religion.
6. Plaintiff B. N. Coone is an adult citizen and resident of the City of Bloomfield, New Mexico. He resides approximately 6/10 mile from the City Hall. He is a municipal

taxpayer. He is offended by the placement of the Ten Commandments Monument on the lawn of the Bloomfield City Hall. When he goes to Bloomfield City Hall or other locations nearby, he has to pass the City's display. He frequently drives past the monument. It is unavoidably apparent from the street. Thus, he has regular, direct contact with the Monument. He believes that the City display shows that the City favors the Christian religion and supports Christianity over other religions. He believes that the City's display violates the U.S. Constitution and the New Mexico Constitution.

7. Defendant City of Bloomfield (City) is a municipal corporation and governmental entity created and operating pursuant to the New Mexico statutes. It is located in San Juan County and governs the geographical area known as the City of Bloomfield. The City owns certain real property at issue in this action.
8. Defendant Scott Eckstein is the duly elected and serving Mayor of the City. He is an adult citizen and resident of San Juan County and the State of New Mexico. He is a member of the governing body of the municipality with the authority to manage and control the finances and all property, real and personal, belonging to the municipality. As a member of the governing body of the municipality, he has the authority, with the other members of the governing body, to order the removal of monuments from land belonging to the City. He has been involved with the installation of the Ten Commandments Monument and the City policy concerning placement of monuments on the City Hall lawn. In a City Council Meeting on June 13, 2011, he voted to approve a "consent agenda" item entitled "[a]cknowledge monument placement." He is sued in his official capacity as well as his individual capacity.

9. Defendant Matt Pennington is a member of the Bloomfield City Council. He is an adult citizen and resident of San Juan County and the State of New Mexico. He is a member of the governing body of the municipality with the authority to manage and control the finances and all property, real and personal, belonging to the municipality. As a member of the governing body of the municipality, with the other members of the governing body, he has the power to order the removal of monuments from land belonging to the City. He has been involved with the installation of the Ten Commandments Monument and the City policy concerning placement of monuments on the City Hall lawn. In a City Council Meeting on June 13, 2011, he voted to approve a “consent agenda” item entitled “[a]cknowledge monument placement.” He is sued in his official capacity as well as his individual capacity.

10. Defendant Curtis Lynch is a member of the Bloomfield City Council. He is an adult citizen and resident of San Juan County and the State of New Mexico. He is a member of the governing body of the municipality with the authority to manage and control the finances and all property, real and personal, belonging to the municipality. As a member of the governing body of the municipality, with the other members of the governing body, he has the power to order the removal of monuments from land belonging to the City. He has been involved with the installation of the Ten Commandments Monument and the City policy concerning placement of monuments on the City Hall lawn. In a City Council Meeting on June 13, 2011, he voted to approve a “consent agenda” item entitled “[a]cknowledge monument placement.” He is sued in his official capacity as well as his individual capacity.

11. Defendant Pat Lucero is a member of the Bloomfield City Council. He is an adult citizen and resident of San Juan County and the State of New Mexico. He is a member of the governing body of the municipality with the authority to manage and control the finances and all property, real and personal, belonging to the municipality. As a member of the governing body of the municipality, he has the power to order the removal of monuments from land belonging to the City. He has been involved with the installation of the Ten Commandments Monument and the City policy concerning placement of monuments on the City Hall lawn. In a City Council Meeting on June 13, 2011, he voted to approve a “consent agenda” item entitled “[a]cknowledge monument placement.” He is sued in his official capacity as well as his individual capacity.

12. At all times pertinent to this action, Defendants were acting under color of state law and with the power and authority granted to them by the laws of the State of New Mexico. At all times pertinent to this action, Defendants were acting pursuant to and in compliance with the practice and policies of the City of Bloomfield, New Mexico.

OPERATIVE FACTS

13. Kevin Mauzy is a former City Councilor, a current Commissioner on the City Planning Commission and a current volunteer member of the City Fire Department.

14. City Councilors Lucero and Lynch are also members of the City Fire Department.

15. Kevin Mauzy was a primary instigator behind the installation of the Ten Commandments Monument on the lawn of the City Municipal Complex.

16. On April 3, 2007, at 7:00 AM, then- City Councilor Kevin Mauzy sent an email to the Mayor of Bloomfield that contained material downloaded from the website of the

American Center for Law & Justice, entitled: *A Closer Look At the Supreme Court Decisions in Ten Commandments Cases.*

17. On April 3, 2007, at 7:07 AM then- City Councilor Kevin Mauzy sent an email to the Mayor of Bloomfield that contained material downloaded from the website of the American Center for Law & Justice, entitled: *Excerpts From Supreme Court Decisions in Ten Commandments Cases.*
18. On April 3, 2007, at 7:08 AM then- City Councilor Kevin Mauzy sent an email to the Mayor of Bloomfield that contained material downloaded from the website of the American Center for Law & Justice, entitled: *Ten Commandments Displays In Public Places.*
19. Later that same day, on April 3, 2007, at a “Special Council Meeting,” then- City Councilor Kevin Mauzy requested permission to place a Ten Commandments Monument on the City Hall lawn.
20. At that Council meeting, some citizens spoke in opposition to the placement of the proposed City display.
21. A petition opposing the placement of the proposed monument on City property was presented to the City Council. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City failed to retain this petition.
22. Other citizens wrote letters to the City Council and local newspapers, opposing the placement of the City display.
23. The City Council approved Councilor Mr. Mauzy’s request.

24. On April 16, 2007, Mr. Kevin Theriot of the Alliance Defense Fund, sent to Mr. Kevin Mauzy an email containing a “policy that Haskell County, OK adopted.” According to Mr. Theriot, the “ACLU did not ever challenge this policy.”
25. On April 25, 2007, City Councilor Mauzy sent an email to the City Attorney that included “the policy that was used successfully in Haskell CO, OK.” In this email, Mr. Mauzy also informed the City Attorney that attorneys from the American Center for Law & Justice and the Alliance Defense Fund had already agreed to “represent us, if needed.”
26. On April 25, 2007, then-City Attorney Curtis Gurley emailed then-City Manager Keith Johnson regarding “10 Commandments City of Bloomfield Resolution” and stated that “FYI. Mr. Theriot has indeed agreed to do all the work on this for the City at no charge.”
27. According to its web site, the “Alliance Defense Fund is a servant organization that provides the resources that will keep the door open for the spread of the Gospel through the legal defense of religious freedom, the sanctity of life, marriage and the family. . . ADF is dedicated to preserving and reclaiming religious freedom. Unlike any other organization in America, this is being accomplished through strategic coordination with other like-minded organizations; training Christian attorneys and the future leaders of America; funding key, precedent-setting cases across America; and, when necessary, direct litigation through our in-house team of Christ-centered attorneys.”
28. On June 6, 2007, the City Attorney stated in a letter to Scott C. Cameron, Attorney at Law, that the City “was not in possession of any plan or plans for such historic monuments.”
29. On July 9, 2007, the City Council approved Resolution #2007-12, entitled *A Policy*

Governing Placement of Monuments On The City Hall Lawn. The policy set out several requirements for the placement of monuments. Some of the provisions were:

- a. “Prior to any monuments being placed on the City Hall lawn, approval must be obtained from the City Council of the City of Bloomfield, New Mexico.” (Policy, ¶I, a.)
- b. “Requests for placement or offers of donation shall be made by submitting a proposal to the City Council at one of its regularly scheduled meetings.” (Policy, ¶I, b.)
- c. “The proposal should contain a brief description of the proposed item, including dimensions, along with any available photographs, drawings, artist’s renderings, etc., and a description of the proposed placement location. (Policy, ¶I, b.)
- d. “The City Council shall then consider each request within its normal course of business.” (Policy, ¶I, d.)
- e. Section II, Criteria for Placement, provided: It is being donated by a City of Bloomfield Citizen, group or civic organization.” (Policy, ¶II, b.)
- f. Section II h., Criteria for Placement, provided: “All monuments shall fit within the following ranges of size:
 1. Height: Four (4) feet to Seven (7) feet
 2. Width: Two (2) feet to Four (4) feet
 3. Depth: One (1) foot to Three (3) feet”
- g. Section II a., Additional Considerations, provided: “If the item meets the above-listed criteria, then the Council shall consider the proposed location of the item and evaluate the aesthetics of the proposed placement, the effect said placement will have on the

- remaining open space on the public property, any safety issues, and any other visual or practical effects of locating the item on the proposed site.”.
- h. Section IV provided: “The provisions of this Resolution shall take effect immediately and shall only affect the non public forum that is the lawn of City Hall.”
30. Resolution #2007-12, entitled *A Policy Governing Placement of Monuments On The City Hall Lawn* stated that there was a “limited amount of space on the City Hall lawn.”
31. Placement of the City Ten Commandments Monument violated several of the requirements of the City Policy.
32. On June 13, 2011, without discussion by the City Council, the City Council approved a five-part Consent Agenda, including a part entitled “Acknowledge monument placement.”
33. The action by the City Council on June 13, 2011, violated the provisions of the New Mexico Open meetings Act, NMSA 1978, §10-15-1 because it was done without reasonable notice to the public.
34. This actions by the City Council, taken in violation of the Open Meetings Act, NMSA 1978, §10-15-1, was invalid.
35. On information and belief, on Saturday, June 25, 2011, former City Councilor Kevin Mauzy and others built a concrete foundation on the lawn of the City municipal complex
36. On information and belief, on Friday July 1, 2011, former City Councilor Kevin Mauzy and others placed a large granite monument displaying the Ten Commandments on a concrete foundation on the lawn of the City municipal complex.
37. The Ten Commandments Monument also displays the Great Seal of the United States.

38. The placement of the Ten Commandments Monument was accomplished with the permission of the City and its governing body.
39. The Ten Commandments Monument was the first monument on the lawn of the City municipal complex.
40. Absent specific permission from the Defendants, private citizens and private entities are not allowed to erect monuments on real property of the City.
41. The Ten Commandments Monument was placed with the approval of the City and/or the elected officials of the City including Defendant Mayor Scott Eckstein and members of the City Council.
42. Placement of the Ten Commandments Monument was allowed and accomplished in violation of City ordinances.
43. On information and belief, Defendants accorded preferential treatment to the sponsors of the monument by not requiring adherence to City ordinances and policy requirements.
44. City Policy requires that proposed monuments must be donated by a “City of Bloomfield citizen, group or civic organization ...” On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City did not enforce this policy of limiting the donation of such monuments to those potential donors.
45. The Ten Commandments Monument erected is a permanent granite monument (30” wide by 60” tall by 6” thick) on a granite base (42” wide by 6” tall by 6” thick) placed on a reinforced concrete foundation (60” wide by 36” deep by 12” thick).
46. City Policy requires all monuments to fit within a range of sizes. The Ten

Commandments Monument does not comply with this requirement.

47. According to City Ordinance 15-31, *Definitions*, the term “excavation” means any hole, trench, ditch or depression which penetrates through paved or unpaved surface in a public place resulting from the removal by a person of pavement, dirt or other material.
48. According to the City website, line spotting is required before excavating: “Call Before You Dig. Whether you’re digging a few inches or several feet, the law requires you to call before you dig.”
49. According to City Ordinance 15-66 *Required*, no person shall make any excavation without first obtaining a permit from the City. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing that the installers of the Monument obtained a permit.
50. According to City Ordinance 15-67, *application*, written applications to obtain permits are required before excavation. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing that the installers of the Monument submitted a written application for a permit.
51. According to City Ordinance 15-69, *prerequisites to insurance*, permits may not be issued before evidence is submitted that (1) the applicant is a licensed contractor; (2) that the insurance requirements have been met; (3) that a bond has been submitted and (4) that the applicant agrees to other requirements. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act,

NMSA 1978, §§14-2-1 – 12, the City has no records showing compliance with this ordinance.

52. According to City Ordinance 15-71, *administration and inspection fee*, a fee must be charged for the excavation permit. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing compliance with this ordinance.

53. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing that the erection, construction, and placement of the Ten Commandments Monument complied with the Uniform Building Code.

54. According to City Ordinance 15-33, *Liability insurance*, whether or not required to apply for a permit under this article, no person shall make an excavation in a public place until he/she has provided a certificate of insurance satisfactory to the city manager or his/her designee indicating that such person is insured against claims for damages for personal injury and for property damage which may arise from or out of the performance of the work in the amount not less than one hundred thousand dollars (\$100,000.00) for each person and two hundred thousand dollars (\$200,000.00) for each occurrence, for property damages in the amount not less than one hundred thousand dollars (\$100,000.00) with an aggregate of two hundred thousand dollars (\$200,000.00) for each occurrence. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing compliance with this ordinance.

55. According to City Ordinance 15-43, *backfilling*, any person who trenches or excavates on or within a public place for any purpose whatsoever is required to backfill the trench or excavation as provided therein, including compaction and inspection as required by the city manager or his designee. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing compliance with this ordinance.
56. On information and belief, the Ten Commandments Monument was erected over a City water line.
57. The Ten Commandments Monument is sited at the public entrance to the City of Bloomfield municipal complex.
58. On July 4, 2011, a public unveiling of The Ten Commandments Monument was held at the City’s municipal complex in a ceremony containing religious themes, including references to “eternal life,” “the one who entered the valley of the shadow of death,” “... trust in God and turn to Him for divine guidance ...,” and “... God, the father, the son and the Holy Spirit.”
59. Former City Councilor Kevin Mauzy presided over the unveiling ceremony.
60. City police provided security at the event along with the Farmington Police Department bomb squad and the San Juan County Sheriff’s Office.
61. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records that set out responsibilities for the maintenance and, if necessary, repair of the Ten Commandments Monument.

62. On June 27, 2011, City Manager David Fuqua distributed a memo containing proposed
“RESOLUTION #2011-15 AMENDED POLICY GOVERNING PLACEMENT OF
MONUMENTS ON THE CITY HALL LAWN IN BLOOMFIELD, NEW MEXICO.”
63. According to Mr. Fuqua’s June 27, 2011 Memo, the proposed resolution was “from
Kevin Mauzy and the attorney he is working with.”
64. According to Mr. Fuqua’s June 27, 2011 Memo, the matter would be discussed at the
next City Council meeting on July 11, 2011.
65. According to Mr. Fuqua’s June 27, 2011 Memo, if any of the recipients had questions,
they should contact the Mayor, “Kevin,” or Mr. Fuqua.
66. At the City Council Meeting of July 25, 2011, the Council approved RESOLUTION
2011-15 AMENDING POLICY GOVERNING PLACING OF MONUMENTS ON THE
CITY HALL LAWN.
67. RESOLUTION 2011-15 AMENDING POLICY GOVERNING PLACING OF
MONUMENTS ON THE CITY HALL LAWN recognized that there was a “limited
amount of space on the City Hall lawn.”
68. At the City Council Meeting on July 25, 2011, Kevin Mauzy thanked the Council for
their support of the monument and informed them that another monument was planned.
69. On November 11, 2011, a second monument displaying the Declaration of Independence
was installed on the City Hall lawn.
70. Mr. Kevin Mauzy was a primary instigator behind the installation of the second
monument on the lawn of the City Municipal Complex.
71. On information and belief, and based on its responses to a request for records pursuant to

the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing that the installation of the second monument complied with applicable City Ordinances.

72. On information and belief, and based on its responses to a request for records pursuant to the Inspection of Public Records Act, NMSA 1978, §§14-2-1 – 12, the City has no records showing that the installation of the second monument complied with all applicable City Policy requirements regarding placement of monuments on the City Hall Lawn.

73. On information and belief, Defendants accorded preferential treatment to the sponsors of the second monument by not requiring adherence to City ordinances and policy requirements.

74. The Ten Commandments is a very familiar religious symbol.

75. The City's display of the Ten Commandments has a primary effect to advance religion, and conveys the message that religion and a particular religious belief is favored or preferred.

76. By allowing placement of the City's display of the Ten Commandments Monument, Defendants have endorsed a particular religion.

77. The reaction of reasonable, informed and objective observer who is aware of the purpose, context, and history of the Bloomfield Ten Commandments Monument is that of government endorsement of religion and particularly of Christianity.

78. In authorizing the placement of the Ten Commandments Monument as set out above, the City had no clearly secular purpose.

79. The City's authorization of the Ten Commandments Monument has a primary effect which advances religion.
80. The City's authorization of the Ten Commandments Monument fosters an excessive entanglement of church and state.
81. Plaintiffs have suffered direct and personal contact with the Ten Commandments Monument causing non-economic injury to them. Because the Ten Commandments Monument is displayed at such a prominent location, Plaintiffs are brought into direct and unwelcome personal contact with it or Plaintiffs must alter their behavior to avoid contact with the Monument.
82. Plaintiffs must view a religious object that they wish to avoid but are unable to avoid when they want to access the City municipal complex.
83. The City municipal complex houses the following departments and officials:
- A. City Clerk;
 - B. City Manager;
 - C. City Council Chambers;
 - D. Utilities Department;
 - E. Finance Department;
 - F. Human Resources Department;
 - G. Planning, Zoning and Economic Department.
84. Plaintiffs and others cannot avoid The Ten Commandments Monument if they want to conduct business at the City municipal complex.
85. Plaintiffs' harm is actual personal injury, fairly traceable to the Defendants' unlawful

conduct and likely to be redressed by a favorable decision of the court.

86. The Plaintiffs have suffered and will continue to suffer harm as a result of Defendants' conduct. Plaintiffs' constitutional rights have been violated by the actions of Defendants as set forth above. Plaintiffs seek and are entitled to nominal damages (\$1.00) as against the Defendants in their individual capacities.

87. Plaintiffs have incurred and will incur attorney fees and court costs in the pursuit of this matter. Pursuant to 42 U.S.C. § 1983 and § 1988, Plaintiffs are entitled to reimbursement for said attorney fees and court costs.

CAUSE OF ACTION / ESTABLISHMENT CLAUSE

88. The City's Ten Commandments Monument violates the Establishment Clause of the First Amendment to the United States Constitution.

89. The City's Ten Commandments Monument is government speech that violates the Establishment Clause of the First Amendment to the United States Constitution.

90. The placement of the City's Ten Commandments Monument by Defendants amounts to their endorsement of a particular religion in violation of the Establishment Clause of the First Amendment to the United States Constitution.

91. The conduct by City officials and City elected officials amounted to an excessive government entanglement with religion.

92. Considering the close relationship between City officials, Mr. Kevin Mauzy and the Alliance Defense Fund, the City's predominant purpose in authorizing the Ten Commandments Monument was to endorse religion.

93. The City's Ten Commandments Monument violates Article II, § 11, Religious freedom,

of the New Mexico Constitution which provides that “Every man shall be free to worship God according to the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.”

94. Plaintiffs seek and are entitled to equitable relief ending the presence of the City’s Ten Commandments Monument on the property owned by the City of Bloomfield as set forth above.

95. Plaintiffs seek and are entitled to nominal damages (\$1.00) as a result of the harm suffered based upon the City’s display of the presence the Ten Commandments Monument, as set forth above.

RELIEF REQUESTED

WHEREFORE, Plaintiffs are entitled to and demand:

1. An order that the City’s Ten Commandments Monument be immediately removed from the real property owned by the City of Bloomfield, New Mexico;
2. Declaratory relief that the presence and display of the City’s Ten Commandments Monument on the real property owned by the City violates the constitutional rights of the Plaintiffs;
3. For an award of nominal damages of \$1.00 to each Plaintiff pursuant to Plaintiffs’ claims under the United States Constitution;
4. Plaintiffs make no claim for damages under the New Mexico Constitution;

5. For an award of attorney fees and court costs under 42 U.S.C. § 1983 and § 1988; and,
6. For such other and further relief as the court deems just and proper in the premises.

Respectfully submitted,

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