

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

THE SATANIC TEMPLE,

PLAINTIFF / APPELLANT,

v.

CITY OF BELLE PLAINE, MN

DEFENDANT / APPELLEE.

CASE NO. 21-3079 and 21-3081

STATEMENT OF ISSUES

COMES NOW Appellant The Satanic Temple, by and through counsel of record, with a statement of issues on appeal pursuant to FRAP 10(b)(3)(a).

Plaintiff / Appellant (“TST”) is an atheistic religious corporation. Defendant / Appellee is a municipal corporation which recast part of its Park as a “free speech zone” for the purpose of installing a particular Christian monument which was designated as “private speech.” In discussions about opening the Park, the tie-breaking voting councilor sought and received assurances that no competing monuments from a Satanic or Atheistic viewpoint would be allowed under the resolution.

As enacted, the resolution allowed competing monuments from a

Satanic or Atheistic viewpoint, but required that all monuments be no larger than the dimensions of the Christian monument. TST sought and received approval to install a to-be-commissioned Satanic monument, to be placed in the same park. No other monuments were approved.

A public controversy ensued about TST's display being allowed to compete with the Christian monument. Upon TST notifying the City that its monument was complete and ready for installation, the City resolved off-the-record: (1) to have the Christian monument removed; and (2) to shut down the "free speech" zone. TST was not notified of this plan until after the Christian monument was removed. The plan was formalized the business day after TST's first notice, without an opportunity to object. In sum, the Christian monument got about 10 months of exclusive access to the Park. The City issued a press release that the "free speech zone" was shut down because of the public controversy.

TST sued ("Satanic Temple I"), alleging Federal and Minnesota constitutional claims, as well as a Minnesota promissory estoppel claim. The City moved for judgment on the pleadings on all counts. The District Court dismissed the constitutional claims (both State and Federal) for

various deficiencies in the allegations of facts. The dismissal was explicitly “without prejudice” and did not address leave to amend the complaint by any particular time. The promissory estoppel count survived.

About three months later, TST sought leave to amend the scheduling order to permit an amended complaint to correct the pleading deficiencies; or, alternatively, to voluntarily dismiss the promissory estoppel claim so all of the legal issues could be heard at the same time. A magistrate heard the motion and issued a written opinion denying leave to reassert the constitutional claims on timeliness grounds and denied leave to voluntarily dismiss the promissory estoppel claim.

Together with the motion to amend the scheduling order to allow the amended complaint, TST also sought leave to permit more time for discovery, and for an order compelling production of discovery as to why the City closed the “free speech zone.” The magistrate opinion denied this on both timeliness grounds and on a finding that “why” is irrelevant to the injustice prong of promissory estoppel. In the order granting summary judgment, albeit for different reasons, the District Court

affirmed the order in all respects.

After the magistrate opinion declined to amend the scheduling order, and in reliance on the District Court's dismissal of the constitutional claims "without prejudice," TST refiled the constitutional claims as a separate action ("Satanic Temple II.") The City moved to dismiss Satanic Temple II as running afoul of claim preclusion, arguing that the order denying leave to amend was a *de facto* dismissal "with prejudice." The City also moved for sanctions.

The District Court heard both cases (Satanic Temple I and Satanic Temple II) and held that (1) the promissory estoppel claim should be summarily dismissed because there was neither reasonable reliance nor injustice; (2) Satanic Temple II was barred by claim preclusion, notwithstanding that the constitutional claims were dismissed "without prejudice," because the magistrate order denying leave to amend the complaint was a *de facto* dismissal with prejudice; and (3) sanctions were appropriate against TST's counsel of record because it was objectively meritless to refile the constitutional claims as a separate action. Item (3) has not yet been liquidated to an attorney's fee award, but undersigned

counsel anticipates that the sanctions order will be timely finalized for consolidation with Satanic Temple II (21-3081).

The following issues are anticipated in the appeal:

SATANIC TEMPLE I (21-3079)

1: The District Court erred by dismissing the constitutional claims by failing to treat the allegations of the complaint as true and giving TST the benefit of reasonable inferences. To-wit:

1.1: The City shut down the “free speech zone” for the purpose of precluding the practice of TST’s religion (i.e. emplacing the Display), which runs afoul of the Free Exercise Clause and Minnesota’s analog.

1.2: The City shut down the “free speech zone,” for the purpose of quelling a public controversy, which runs afoul of the Free Speech Clause and Minnesota’s analog.

1.3: By opening the “free speech zone” to Christians, and closing it to exclude Satanists, the City afforded the two groups unequal benefits of law, which runs afoul of the Equal Protection Clause.

1.4: The permit for emplacing the Display was an “easement”

within the meaning of RLIUPA, such that a statutory strict scrutiny standard applied to the exclusion of TST's Display from the Park notwithstanding any finding of neutrality.

2: The District Court erred in granting summary dismissal of the promissory estoppel count because:

2.1: The District Court construed whether TST detrimentally relied on the City's promise in the *least* favorable light to TST, as opposed to the most favorable light.

2.2: The District Court erred by prohibiting discovery as to why the City broke its promise. "Why" is relevant to the injustice prong.

2.3: The City did not offer facts in an admissible format until their reply brief, yet the District Court denied TST's motion to strike.

3: The District Court erred by affirming the magistrate opinion which declined leave to amend the scheduling order. TST was not "dilatory," neither in relying on the general bar against discovery while a motion to dismiss is pending nor by waiting three months before addressing the need to file an amended complaint to the City.

SATANIC TEMPLE II (21-3081)

1: The District Court erred by dismissing the constitutional claims, with prejudice, based on a finding that the magistrate opinion was a *de facto* dismissal with prejudice because:

1.1: The magistrate lacked jurisdiction to enter a dismissal with prejudice.

1.2: The magistrate’s denial of the motion to amend the scheduling order was not a decision “on the merits.”

1.3: Because the constitutional claims were dismissed without prejudice, the magistrate opinion could not be “contorted” into a denial on the merits under preexisting Eighth Circuit law (see Kulinski v. Medtronic Bio-Medicus, Inc., 112 F.3d 368, 373 (8th Cir.1997)).

2: The District Court erred by dismissing the constitutional claims with prejudice as “futile” by failing to treat all facts in the complaint as true and giving TST the benefit of reasonable inferences. To-wit:

2.1: The decision to shut down the “free speech zone” was the product of explicit viewpoint discrimination, or was not a

reasonable speech restriction, either of which are barred by the Free Speech Clause.

2.2: TST's efforts to emplace the Display was the practice of religion, such that the City's purposeful exclusion of the Display ran afoul of the Free Exercise Clause and Minnesota's analog.

2.3: The decision to open the "free speech zone" for the unique purpose of accommodating the Christian monument, and closing it for the unique purpose of excluding the Satanic monument, was unconstitutional governmental preference of one religious denomination, barred by the Establishment Clause and Minnesota's analog.

2.4: The decision to open the "free speech zone" for the unique purpose of accommodating the Christian monument, and shutting it for the unique purpose of excluding the Satanic monument, was unequal treatment under the law, barred by the Equal Protection Clause and Minnesota's analog.

2.5: The City's permit vested TST with a protectible property interest which could not be taken away without procedural due

process; the City failed to give meaningful notice or a hearing.

3: The District Court erred by finding that it was objectively frivolous for undersigned counsel to file Satanic Temple II. Even if undersigned counsel's analysis was legally wrong, diligent research shows that this Court has not squarely rejected the legal theories in § 1.

Respectfully submitted on September 29, 2021,
on behalf of Plaintiff / Appellant

By: /s/ Matthew A. Kezhaya

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CERTIFICATE AND NOTICE OF SERVICE

NOTICE IS GIVEN that I, Matthew A. Kezhaya, efiled the foregoing document by uploading it to the Court's CM/ECF system on September 29, 2021 which sends service to registered users, including all other counsel of record in this cause. /s/ Matthew A. Kezhaya