

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

JANE FELIX, and B.N. COONE,

Plaintiffs,

vs.

NO: 1:12-cv-00125-JAP-WDS

CITY OF BLOOMFIELD, NEW MEXICO; 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.

ANSWER OF DEFENDANTS

COME NOW Defendants City of Bloomfield, Scott Eckstein, Matt Pennington, Curtis Lynch, and Pat Lucero and state the following as their Answer. Except as specifically admitted or explained herein, Defendants deny each and every matter and allegation contained in said Complaint.

1. Defendants ADMIT that Plaintiffs are bringing a civil rights action based on 42 U.S.C. § 1983 and § 1988, but Defendants DENY that Plaintiffs' rights were or are being violated as alleged in Paragraph 1 or that Plaintiffs are entitled to their requested relief. As to all other allegations in paragraph 1, these allegations characterize Plaintiffs' claims and state conclusions of law to which no answer is required. To the extent it alleges facts, Defendant DENIES the same.

2. Defendants ADMIT that Plaintiffs are bringing this action under 28 U.S.C. § 1343, 42 U.S.C. § 1983, and 28 U.S.C. § 1367. Defendants DENY that any claims can be stated as alleged in paragraph 2.

3. Defendants ADMIT that some of the conduct complained of occurred in the District of New Mexico and that the individual named Defendants reside in the District of New Mexico. As to all other allegations in Paragraph 3, Defendants lack knowledge or information sufficient to form a belief as to their truth, and therefore DENIES the same.

4. As to allegations in paragraph 4, these allegations characterize Plaintiffs' claims and states conclusions of law to which no answer is required. To the extent it alleges facts, Defendant DENIES the same.

5. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5, and therefore DENY the same.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6, and therefore DENY the same.

7. As to allegations in paragraph 7, Defendants ADMIT that the City of Bloomfield is a municipal corporation and government entity created and operating pursuant to New Mexico statutes. Defendants ADMIT that the City of Bloomfield is located in San Juan County and governs the geographical area known as the City of Bloomfield. Defendants ADMIT that the City of Bloomfield owns some real property at issue in this action.

8. Defendants ADMIT that Scott Eckstein is the Mayor of Bloomfield and a citizen and resident of San Juan County and the State of New Mexico. Defendants ADMIT that Eckstein has been involved with the City's policy concerning placement of monuments on the City Hall Lawn and that he is being sued in his individual and official capacities. Defendants DENY that

Eckstein has the authority to manage and control the finances and all property, real and personal, belonging to the municipality. Defendants DENY that Eckstein was involved with the installation of the Ten Commandments Monument. Defendants DENY that Eckstein voted to approve a “consent agenda” item entitled “[a]cknowledge monument placement” on June 13, 2011. As to all other allegations in paragraph 8, Defendants DENY these allegations.

9. Defendants ADMIT that Matt Pennington is a member of the Bloomfield City Council and a citizen and resident of San Juan County and the State of New Mexico. Defendants ADMIT that Pennington is a member of the governing body that has the power to order the removal of monuments from land belonging to the City. Defendants ADMIT that Pennington has been involved with the City’s policy concerning placement of monuments on the City Hall Lawn and that he voted to approve a “consent agenda” item entitled “[a]cknowledge monument placement” on a June 13, 2011 City Council Meeting. Defendants ADMIT that Pennington is being sued in his individual and official capacities. Defendants DENY that Pennington has the authority to manage and control the finances and all property, real and personal, belonging to the municipality. Defendants DENY that Pennington was involved with the installation of the Ten Commandments Monument. As to all other allegations in paragraph 9, Defendants DENY these allegations.

10. Defendants ADMIT that Curtis Lynch is a member of the Bloomfield City Council and a citizen and resident of San Juan County and the State of New Mexico. Defendants ADMIT that Lynch is a member of the governing body that has the power to order the removal of monuments from land belonging to the City. Defendants ADMIT that Lynch has been involved with the City’s policy concerning placement of monuments on the City Hall Lawn and that he voted to approve a “consent agenda” item entitled “[a]cknowledge monument placement”

on a June 13, 2011 City Council Meeting. Defendants ADMIT that Lynch is being sued in his individual and official capacities. Defendants DENY that Lynch has the authority to manage and control the finances and all property, real and personal, belonging to the municipality. Defendants DENY that Lynch was involved with the installation of the Ten Commandments Monument. As to all other allegations in paragraph 10, Defendants DENY these allegations.

11. Defendants ADMIT that Pat Lucero is a member of the Bloomfield City Council and a citizen and resident of San Juan County and the State of New Mexico. Defendants ADMIT that Lucero is a member of the governing body that has the power to order the removal of monuments from land belonging to the City. Defendants ADMIT that Lucero has been involved with the City's policy concerning placement of monuments on the City Hall Lawn and that he voted to approve a "consent agenda" item entitled "[a]cknowledge monument placement" on a June 13, 2011 City Council Meeting. Defendants ADMIT that Lucero is being sued in his individual and official capacities. Defendants DENY that Lucero has the authority to manage and control the finances and all property, real and personal, belonging to the municipality. Defendants DENY that Lucero was involved with the installation of the Ten Commandments Monument. As to all other allegations in paragraph 11, Defendants DENY these allegations.

12. Paragraph 12 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

13. Defendants ADMIT the allegations in paragraph 13.

14. Defendants ADMIT that Lucero and Lynch are volunteer members of the City Fire Department.

15. Defendants ADMIT that Kevin Mauzy was involved in the installation of the Ten Commandments Monument on the lawn of the City Municipal Complex. As for all other

allegations in paragraph 15, Defendants lacks knowledge or information sufficient to form a belief as to their truth, and therefore DENY the same.

16. Defendants ADMIT the allegations in paragraph 16.

17. Defendants ADMIT the allegations in paragraph 17.

18. Defendants ADMIT the allegations in paragraph 18.

19. Defendants ADMIT the allegations in paragraph 19.

20. Defendants ADMIT the allegations in paragraph 20.

21. Defendants ADMIT that a petition opposing a placement of the proposed Ten Commandments Monument was presented to the City Council. As to all other allegations contained in paragraph 21, Defendants DENY these allegations.

22. Defendants ADMIT the allegations in paragraph 22.

23. Defendants ADMIT the allegations in paragraph 23.

24. Defendants ADMIT that on April 16, 2007, Kevin Theirot of the Alliance Defense Fund sent Keven Mauzy an email containing a sample policy and that the language in this email speaks for itself.

25. Defendants ADMIT that on April 25, 2007, City Councilor Mauzy sent an email to the City Attorney, that this email contained a proposed policy, and that the language in this email speaks for itself.

26. Defendants ADMIT that on April 25, 2007, then-City Attorney Curtis Gurley emailed then-City Manager Keith Johnson regarding a proposed resolution and that the language in this email speaks for itself.

27. Defendants ADMIT that the Alliance Defense Fund has a website and that the statement contained in allegation 27 appears on this website and that this statement and the

website speak for themselves. As to all other allegations in paragraph 27, Defendants DENY the same.

28. Defendants ADMIT the allegations in paragraph 28.

29. Defendants ADMIT that the City Approval approved Resolution #2007-12 entitled *A Policy Governing Placement of Monuments On the City Hall Lawn* on July 9, 2007 and that this written policy speaks for itself. Defendants DENY the allegations in paragraph 29 to the extent Plaintiffs misstate the content, purpose, or effect of this resolution. As to all other allegations in paragraph 29, Defendants DENY the same.

30. Defendants ADMIT that the City Approval approved Resolution #2007-12 entitled *A Policy Governing Placement of Monuments On the City Hall Lawn* on July 9, 2007 and that this written policy speaks for itself. Defendants DENY the allegations in paragraph 30 to the extent Plaintiffs misstate the content, purpose, or effect of this resolution. As to all other allegations in paragraph 30, Defendants DENY these allegations.

31. Defendants DENY the allegations in paragraph 31.

32. Defendants ADMIT the allegations in paragraph 32.

33. Defendants DENY the allegations in paragraph 33.

34. Defendants DENY the allegations in paragraph 34.

35. Defendants admit that Kevin Mauzy and others built a concrete foundation on the lawn of the City municipal complex. As for all other allegations in paragraph 35, Defendant lacks knowledge or information sufficient to form a belief as to their truth, and therefore DENIES the same.

36. Defendants ADMIT that former City Councilor Kevin Mauzy and others placed a granite monument displaying the Ten Commandments on a concrete foundation on the lawn of

the City municipal complex on July 1, 2011. As to all other allegations in paragraph 36, Defendants DENY these allegations.

37. Defendants ADMIT the allegations in paragraph 37.

38. Defendants ADMIT that the Ten Commandments Monument complied with relevant City Policies and therefore was approved by the City Council pursuant to these policies. As to all other allegations in paragraph 30, Defendants DENY these allegations.

39. Defendants ADMIT that the Ten Commandments Monument was the first monument on the lawn of the City municipal complex. Defendants DENY the allegations to the extent that they imply the Ten Commandments Monument is the only monument on the lawn.

40. Defendants ADMIT that private citizens and private entities are not allowed to erect monuments on City property without complying with relevant City policies. As to all other allegations in paragraph 30, Defendants DENY these allegations.

41. Defendants ADMIT that the Ten Commandments Monument complied with relevant City Policies and therefore was approved by the City Council pursuant to these policies. As to all other allegations in paragraph 30, Defendants DENY these allegations.

42. Defendants DENY the allegations in paragraph 42.

43. Defendants DENY the allegations in paragraph 43.

44. Defendants ADMIT that a City Policy entitled *A Policy Governing Placement of Monuments On the City Hall Lawn* regulates the placement of monuments on the City Hall Lawn and that this written policy speaks for itself. Defendants DENY that they did not comply with the requirements of this policy. As to all other allegations in paragraph 44, Defendants DENY these allegations.

45. Defendants ADMIT that the Ten Commandments monument is a granite monument on a granite base placed on a reinforced concrete foundation. Defendants DENY that this is a permanent monument. Defendants DENY all other allegations in paragraph 45.

46. Defendants ADMIT that a city policy requires all monuments to fit within a range of sizes. Defendants DENY that the Ten Commandments Monument does not comply with this requirement.

47. Defendants ADMIT that City Ordinance 15-31 exists and that this ordinance speaks for itself. Defendants DENY the allegations in paragraph 47 to the extent Plaintiffs misstate the content, purpose, or effect of this ordinance.

48. Defendants ADMIT that the City has a website and that the quoted language appears on this website and that the language speaks for itself. Defendants DENY the allegations in paragraph 48 to the extent Plaintiffs misstate the content, purpose, or effect of language on the City's website.

49. Defendants ADMIT that City Ordinance 15-66 exists and that this ordinance speaks for itself. Defendants DENY the allegations in paragraph 49 to the extent Plaintiffs misstate the content, purpose, or effect of this ordinance. Defendants ADMIT that they have no written records showing that the installers of the Monument complied with Ordinance 15-16, but Defendants DENY that they violated this ordinance or inconsistently applied this ordinance.

50. Defendants ADMIT that City Ordinance 15-67 exists and that this ordinance speaks for itself. Defendants DENY the allegations in paragraph 50 to the extent Plaintiffs misstate the content, purpose, or effect of this ordinance. Defendants ADMIT that they have no written records showing that the installers of the Monument complied with Ordinance 15-67, but Defendants DENY that they violated this ordinance or inconsistently applied this ordinance.

51. Defendants ADMIT that City Ordinance 15-69 exists and that this ordinance speaks for itself. Defendants DENY the allegations in paragraph 51 to the extent Plaintiffs misstate the content, purpose, or effect of this ordinance. Defendants ADMIT that they have no written records showing that the installers of the Monument complied with Ordinance 15-69, but Defendants DENY that they violated this ordinance or inconsistently applied this ordinance.

52. Defendants ADMIT that City Ordinance 15-71 exists and that this ordinance speaks for itself. Defendants DENY the allegations in paragraph 52 to the extent Plaintiffs misstate the content, purpose, or effect of this ordinance. Defendants ADMIT that they have no written records showing that the installers of the Monument complied with Ordinance 15-71, but Defendants DENY that they violated this ordinance or inconsistently applied this ordinance.

53. Defendants ADMIT that they have no written records showing that the installers of the Monument complied with the Uniform Building Code, but Defendants DENY that they violated the Uniform Building Code or inconsistently applied the Uniform Building Code.

54. Defendants ADMIT that City Ordinance 15-33 exists and that this ordinance speaks for itself. Defendants DENY the allegations in paragraph 54 to the extent Plaintiffs misstate the content, purpose, or effect of this ordinance. Defendants ADMIT that they have no written records showing that the installers of the Monument complied with Ordinance 15-33, but Defendants DENY that they violated this ordinance or inconsistently applied this ordinance.

55. Defendants ADMIT that City Ordinance 15-43 exists and that this ordinance speaks for itself. Defendants DENY the allegations in paragraph 55 to the extent Plaintiffs misstate the content, purpose, or effect of this ordinance. Defendants ADMIT that they have no written records showing that the installers of the Monument complied with Ordinance 15-54, but Defendants DENY that they violated this ordinance or inconsistently applied this ordinance.

56. Defendants lack knowledge or information sufficient to form a belief as to the truth of paragraph 56 at this time, and therefore DENY the same.

57. Defendants ADMIT that the Ten Commandments Monument is located near the public entrance to the City of Bloomfield municipal complex. As for all other allegations in paragraph 57, Defendants DENY these allegations.

58. Defendants ADMIT that an event took place on July 4, 2011 at the City's municipal complex. Defendants DENY that the City of Bloomfield controlled or sponsored the substance of this event in any way. As for all other allegations in paragraph 58, Defendants lack knowledge or information sufficient to form a belief as to their truth, and therefore DENY the same.

59. Defendants ADMIT the allegations in paragraph 59.

60. Defendants ADMIT the allegations in paragraph 60.

61. Defendants ADMIT that they have no written records showing the responsibilities for the maintenance and repair of the Ten Commandments Monument.

62. Defendants ADMIT that on June 27, 2011, City Manager David Fuqua distributed a written memo containing a proposed Resolution #2011-15 amending the policy governing placement of monuments on the City Hall lawn and that this written memo speaks for itself. Defendants DENY the allegations in paragraph 62 to the extent Plaintiffs misstate the content, purpose, or effect of this memo.

63. Defendants ADMIT that on June 27, 2011, City Manager David Fuqua distributed a written memo containing a proposed Resolution #2011-15 amending the policy governing placement of monuments on the City Hall lawn and that this written memo speaks for itself.

Defendants DENY the allegations in paragraph 63 to the extent Plaintiffs misstate the content, purpose, or effect of this memo.

64. Defendants ADMIT that on June 27, 2011, City Manager David Fuqua distributed a written memo containing a proposed Resolution #2011-15 amending the policy governing placement of monuments on the City Hall lawn and that this written memo speaks for itself. Defendants DENY the allegations in paragraph 64 to the extent Plaintiffs misstate the content, purpose, or effect of this memo.

65. Defendants ADMIT that on June 27, 2011, City Manager David Fuqua distributed a written memo containing a proposed Resolution #2011-15 amending the policy governing placement of monuments on the City Hall lawn and that this written memo speaks for itself. Defendants DENY the allegations in paragraph 65 to the extent Plaintiffs misstate the content, purpose, or effect of this memo.

66. Defendants ADMIT the allegations in paragraph 66.

67. Defendants ADMIT that Resolution 2011-15 exists and that this resolution speaks for itself. Defendants DENY the allegations in paragraph 67 to the extent Plaintiffs misstate the content, purpose, or effect of this resolution.

68. Defendants ADMIT that former Councilor Kevin Mauzy thanked the City Council for its support at a City Council Meeting on July 25, 2011 and that Mauzy informed the Council that another monument was planned. As for all other allegations in paragraph 68, Defendants DENY these allegations.

69. Defendants ADMIT the allegations in paragraph 69.

70. Defendants ADMIT that Kevin Mauzy was involved in the installation of the second monument on the lawn of the City Municipal Complex. As for all other allegations in

paragraph 15, Defendants lacks knowledge or information sufficient to form a belief as to their truth, and therefore DENY the same.

71. Defendants ADMIT that it has no written records showing the installation of the second monument complied with applicable City Ordinances. Defendants DENY that the installation of the second monument violated any City Ordinances.

72. Defendants ADMIT that it has no written records showing the installation of the second monument complied with applicable City Policies regarding placement of monuments on the City Hall Lawn. Defendants DENY that the installation of the second monument violated any City Ordinances regarding placement of monuments on the City Hall Lawn.

73. Defendants DENY the allegations in paragraph 73.

74. As for the allegations in paragraph 74, Defendants ADMIT that the Ten Commandments is a religious document, but in this case this religious document has a historical and secular purpose and meaning. As to all other allegations in paragraph 74, Defendants DENY the same.

75. Defendants DENY the allegations in paragraph 75.

76. Defendants DENY the allegations in paragraph 76.

77. Defendants DENY the allegations in paragraph 77.

78. Defendants DENY the allegations in paragraph 78.

79. Defendants DENY the allegations in paragraph 79.

80. Defendants DENY the allegations in paragraph 80.

81. Defendants DENY that Plaintiffs are suffering any non-economic injury. As for all other allegations in paragraph 81, Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore DENY the same.

82. Defendants DENY the allegations in paragraph 82.

83. Defendants ADMIT the allegations in paragraph 83.

84. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 84, and therefore DENY the same.

85. Paragraph 85 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

86. Paragraph 86 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

87. Paragraph 87 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

88. Paragraph 88 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

89. Paragraph 89 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

90. Paragraph 90 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

91. Paragraph 91 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

92. Paragraph 92 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

93. Paragraph 93 contains claims and states conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

94. Paragraph 94 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

95. Paragraph 95 contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same.

96. The section of Plaintiffs' Complaint entitled "relief Requested" contains claims and states legal conclusions to which no answer is required. To the extent it alleges facts, Defendants DENY the same. Defendants affirmatively DENY that Plaintiff is entitled to the requested relief specified in paragraphs 1-6 of this section.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

97. Plaintiffs' complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

98. Plaintiffs' complaint fails to state a claim upon which legal, injunctive, or declaratory relief can be granted.

THIRD AFFIRMATIVE DEFENSE

99. The Plaintiffs lack standing to bring this action, they are not asserting a justiciable claim, and the Court lacks jurisdiction over this matter.

FOURTH AFFIRMATIVE DEFENSE

100. Defendants' actions do not violate any of Plaintiffs' rights.

FIFTH AFFIRMATIVE DEFENSE

101. Plaintiffs' claims fail to allege the violation of any rights by a state actor.

SIXTH AFFIRMATIVE DEFENSE

102. Plaintiffs' claims and relief are barred by statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

103. The displays and display policy have a secular purpose, do not advance religion, and do not involve excessive entanglement with religion.

EIGHTH AFFIRMATIVE DEFENSE

104. Removal or modification of the displays is barred by the First Amendment to the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

105. Removal of the displays is barred by due process of law.

TENTH AFFIRMATIVE DEFENSE

106. Suppression of expression based on audience reaction is unconstitutional.

ELEVENTH AFFIRMATIVE DEFENSE

107. Plaintiffs have not suffered direct and personal injury from the displays that are on public property, nor have they altered their behavior as a result thereof, and especially as opposed to any other display that Plaintiffs interpret as religious that exists on private property or other public property.

TWELTH AFFIRMATIVE DEFENSE

108. The public and private space is filled with what Plaintiffs may view as religious symbols, or which may be religious symbols in certain context but are not recognized as such by Plaintiffs, and the effect of the memorials alleged herein is de minimis.

THIRTEENTH AFFIRMATIVE DEFENSE

109. The displays are erected by and belong to private entities, and were created without the City's involvement, and the displays' existence on private or state property does not constitute a violation of the rights of the Plaintiffs by the Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

110. The City has created a non-public forum or a limited public forum with regard to these displays, and the displays are the speech of the private entities in that non-public forum or limited public forum, are not state action or speech, and do not violate the rights of the Plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

111. The Plaintiffs fail to state any unconstitutional municipal policy attributable to the City

SIXTEENTH AFFIRMATIVE DEFENSE

112. Defendants sued in their individual capacities are entitled to qualified immunity.

113. Defendants reserve the right to add additional affirmative defenses as they become known through discovery.

WHEREFORE, Defendants City of Bloomfield, Scott Eckstein, Matt Pennington, Curtis Lynch, and Pat Lucero request that Plaintiffs' complaint be dismissed in its entirety; that Plaintiffs be responsible for all costs of this action; and that Defendants be granted such other and further relief to which they are entitled.

Respectfully submitted,

<p>T. Ryan Lane (Fed. Bar No. 12-10) GERDING & O'LOUGHLIN, PC PO Box 1020 Farmington, NM 87499 Phone: 505-325-1804 Fax: 505-325-4675 E-mail: trlgando@qwestoffice.net</p> <p><i>Attorney for Defendants</i></p>	<p>/s/ Jonathan A. Scruggs Jonathan A. Scruggs* TN Bar No. 025679 ALLIANCE DEFENSE FUND 699 Oakleaf Office Lane, Suite 107 Memphis, TN 38117 Phone: (901) 684-5485 Facsimile: (901) 684-5499 E-mail: jscruggs@telladf.org</p> <p><i>Attorney for Defendants</i></p> <p>*Admitted to practice Pro Hac Vice</p>
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	<p>Joel L. Oster** KS Bar No. 18547 ALLIANCE DEFENSE FUND 15192 Rosewood Leawood, Kansas 66224 Phone: (913) 685-8000 Fax: (913) 685-8001 E-mail: joster@telladf.org</p> <p><i>Attorney for Defendants</i></p> <p>**Pro Hac Vice application forthcoming</p>
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Certificate of Service

I hereby certify that on the 22nd day of March, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

/s/ Jonathan Scruggs