

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

FREEDOM FROM RELIGION  
FOUNDATION and JEROME H.  
BLOOM,

Plaintiffs,

v.

THE CITY OF SHELTON,  
CONNECTICUT; MARK A. LAURETTI,  
in his official capacity; and RONALD  
HERRICK, in his official capacity,

Defendants.

Civ. No. \_\_\_\_\_

**COMPLAINT**

**I. INTRODUCTORY STATEMENT**

1. The City of Shelton, Connecticut, allows private parties to erect holiday displays in Constitution Park. The city allowed the American Legion, a group dedicated to reminding citizens of God's "proper place at the center of the nation's life," to erect a display featuring heralding angels in Constitution Park. The city prohibited Plaintiffs' display, which asserts that there are "no angels" because the city deemed it "offensive to many."
2. Plaintiffs challenge this violation of their free speech rights, guaranteed by the First and Fourteenth Amendments to the United States Constitution, and bring this civil rights action under 42 U.S.C. § 1983, seeking a declaratory judgment, injunctive relief, and nominal damages.

**II. JURISDICTION AND VENUE**

3. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331.
4. The Court has authority to order declaratory relief under 28 U.S.C. §2201 and award injunctive relief under 28 U.S.C. §1343.
5. Venue is appropriate under 28 U.S.C. §1391(e).

### **III. PARTIES**

6. Freedom From Religion Foundation (“FFRF”) is a nationwide not-for-profit 501(c)(3) membership organization that advocates for the separation of state and church, and educates the public on matters of nontheism.
7. FFRF has 23,500 members in the United States, including 201 members living in the State of Connecticut and 2 members living in the City of Shelton, which is located in Fairfield County, Connecticut.
8. FFRF and its Connecticut membership strongly object to local governments infringing on free speech or favoring religious speech over nonreligious speech.
9. Plaintiff Jerome H. Bloom, R.N., is a resident of the City of Shelton.
10. Bloom is a member of FFRF.
11. Bloom is nonreligious and strongly believes that government property should not be open exclusively to religious displays.
12. Defendant Mark A. Laretti is the mayor of Shelton, Connecticut.
13. Laretti is the final decision-maker of whether the city will approve or deny applications to erect private displays in Constitution Park (“the Park”).
14. Defendant Ronald Herrick is the director of the city’s Parks and Recreation Department.
15. The city’s Parks and Recreation Department’s duties include accepting applications to erect displays on City property and maintaining the Park.

### **IV. THE CONSTITUTION PARK FORUM**

16. Constitution Park is located on the eastern side of the intersection between Constitution Blvd. S, and Long Hill Ave., in Shelton.
17. The City of Shelton owns and maintains the Park.
18. The Park is open to the public.
19. The city opened the Park for public use as a place of expressive activity.
20. The city has allowed private parties to erect and sponsor private displays in the Park.
21. In a letter dated September 29, 2015, the city informed FFRF that the city “has no policy for erecting displays in public parks per se,” but the city “merely receives request for permission and has a right to object.”
22. A true and accurate copy of this letter is attached as Exhibit 1.
23. Defendant Mayor Lauretti decides, on behalf of the city, whether to approve requests to erect private displays in the Park.
24. Mayor Lauretti has complete discretion over which requests to approve.
25. Other than the “right to object,” the city has no formal criteria for allowing private parties to erect displays in the Park.

#### **V. VIEWPOINT DISCRIMINATION IN THE FORUM**

26. In practice, the city has approved written requests of the American Legion to erect private holiday displays in the Park every year since at least 2012.
27. True and accurate copies of these requests are attached as Exhibit 2.
28. The American Legion holiday display depicts heralding angels.
29. While the American Legion is an ostensibly patriotic organization for veterans, it claims it was founded to acknowledge “God as the source of all our rights and freedoms. Apart from God, our history as a people has no meaning. . . . The American Legion reaffirms

its commitment to bring all Americans closer to their Creator and remind them of His proper place at the center of the nation's life.”

30. The American Legion regularly erects religious displays on government property throughout the United States.
31. The heralding angels in the American Legion's display represent angels from the biblical nativity story.
32. Major opinion polls consistently find that as many as 8 in 10 U.S. citizens believe in angels.
33. An angel is defined by most accepted dictionary definitions as “a spiritual being that serves especially as a member from God or as a guardian of human beings,” and angels are traditionally depicted as white-robed, winged figures with haloes, as exemplified by the American Legion display.
34. As such, the angel display in the Park constitutes not only a religious display, but one with a sectarian message, since the display is put up every December to coincide with the traditional celebration of the birth of Jesus, as heralded by angels.
35. Bloom requested permission to erect a nonreligious Winter Solstice display in the Park on November 23, 2015 on behalf of himself and FFRF, and for the benefit of FFRF's purposes and nonreligious members.
36. Bloom's display was a banner that featured a quote from FFRF co-founder Anne Gaylor, including the assertion that there are “no angels.”
37. The full text of this banner is: “At this season of the Winter Solstice, let reason prevail. There are no gods, no devils, no angels, no heaven or hell. There is only our natural world. Religion is but myth & superstition that hardens hearts & enslaves minds.”

38. Defendant Ronald Herrick left Bloom a telephone voice message on December 3, 2015, stating “Jerry, what you had left for me, I got it at city hall and I took it to my supervisor, and unfortunately it was denied, I guess as being offensive to many. So that sign will not be able to be put on the green. Any questions, I guess you could call down to city hall and speak to either the administrative assistant or the mayor, because they’re my bosses, I run it by them. And that’s what I was told...”
39. The city denied Bloom’s request for no reason other than because the city thought it would be “offensive to many.”
40. The city’s denial of Bloom’s display was under color of state law.
41. Bloom’s display is not obscene, libelous, pornographic, or threatening.
42. The city rejected Bloom’s request based on its perceived unpopularity.
43. The city allowed a contrary, popular opinion to be expressed without censorship.
44. The city permitted a private religious display promoting biblical angels, yet denied a private nonreligious display that was critical of belief in biblical angels and religion in general.

#### **VI. FFRF’S ATTEMPTS TO RESOLVE THIS DISPUTE**

45. The day the city denied Bloom’s request, FFRF wrote to the city asking it to reconsider its discriminatory treatment of Bloom’s display, explaining that “[t]he City’s denial of our request to erect a Winter Solstice display on the basis of it being ‘offensive’ is impermissible viewpoint-based discrimination.”
46. A true and accurate copy of this letter is attached as Exhibit 3.
47. FFRF received no response to this request.
48. FFRF called and emailed the city on December 11, but again received no response.

49. FFRF wrote to the city again on December 22, 2015, explaining that the city had prevented Bloom and FFRF from erecting Bloom's display during the 2015 Winter Solstice and requesting assurances that the City would allow FFRF to participate in the forum in 2016.
50. FFRF received no response to this request.
51. FFRF wrote to the city a third time on January 22, 2016, reiterating its request.
52. Finally, the city's counsel called FFRF on January 29, 2016, to assure that the city would provide a written response as soon as possible.
53. FFRF wrote to the city's counsel three weeks later requesting that written response, and offered to place a sign alongside Bloom's display to disclaim the city's endorsement.
54. In response to additional prompting from FFRF, the city's counsel wrote three terse emails in late February and mid-March, but did not propose any solutions or substantively respond to FFRF's concerns.

#### **PLAINTIFFS' INJURIES**

55. The city's actions have caused Bloom and FFRF injury by censoring and excluding their protected expression, and by disparaging Bloom on the basis of his non-belief in religion, rendering him a political outsider.
56. Plaintiffs' injuries are irreparable because Bloom's display was intended as a celebration of the 2015 Winter Solstice, which occurred on December 22, 2015.
57. Bloom and FFRF, nonetheless, intend to apply to the city in the future to display the banner at issue in Constitution Park.
58. Plaintiffs have no adequate remedy at law to correct the continuing deprivations of their constitutional liberties.

59. As a direct and proximate result of Defendants' continuing violations of Plaintiffs' rights, Bloom and FFRF have suffered in the past, and will continue to suffer in the future, direct injuries, including but not limited to the loss of the ability to exercise constitutional rights.

**COUNT I: FREEDOM OF SPEECH**

60. Bloom's display constitutes protected speech under the First Amendment, applicable to the city through the Fourteenth Amendment.

61. The city opened the Park as a forum for private expression by allowing private parties to submit applications to place private displays in the Park.

62. The city's actions were content-based because they distinguished favored speech from disfavored speech on the basis of the ideas or views expressed.

63. The city engaged in unambiguous viewpoint discrimination by rejecting Bloom's display for reasons that were not viewpoint neutral or reasonable.

64. The city violated Bloom's and FFRF's Free Speech rights by censoring Bloom's display based on the display's viewpoint.

65. The city's censorship of unpopular viewpoints is not a reasonable time, place, and manner regulation.

66. The city further violated Bloom's and FFRF's Free Speech rights by enforcing and applying a policy that allows for unbridled discretion over private displays in the Park.

67. The city's actions were not narrowly tailored to serve a compelling state interest.

68. Defendants' censorship of Bloom's display, therefore, does not withstand strict scrutiny.

**COUNT II: EQUAL PROTECTION**

69. Bloom and FFRF are similarly situated to the American Legion because both are private parties that wished to erect unattended holiday displays in the Park.

70. The city granted the American Legion's angel display, but denied Bloom's Winter Solstice display.
71. The city intentionally and purposefully discriminated against FFRF and Bloom because of their nonreligious viewpoint.
72. The city's actions interfered with Bloom's and FFRF's fundamental First Amendment rights.
73. This disparate treatment did not further a compelling state interest.
74. The city had no rational basis for the disparate treatment.
75. Defendants' actions therefore violated Bloom's and FFRF's Equal Protection rights by denying Bloom and FFRF equal access to the forum compared to similarly situated private parties.

WHEREFORE, the Plaintiffs demand judgment against the Defendants as follows:

- a) Judgment declaring that the actions of each Defendant have violated the Free Speech Clause of the First Amendment to the United States Constitution;
- b) Judgment declaring that the criteria to approve private displays in the Park, facially and/or as applied by the Defendants, violate the Free Speech rights protected by the First Amendment to the United States Constitution;
- c) Judgment declaring that the actions of each Defendant have violated the Equal Protection Rights of the Plaintiffs;
- d) Judgment against each Defendant enjoining them from excluding the Plaintiff's display at issue from future display in the Park;
- e) Judgment against each Defendant for nominal damages;



- f) Judgment against each Defendant, jointly and severally, awarding the Plaintiff its reasonable costs, disbursements, and attorneys' fees, as allowed by law, including pursuant to 42 U.S.C. §1988; and
- g) Judgment awarding or ordering such further relief as the Court deems just and equitable.

Respectfully submitted,

Dated: March 22, 2016

BY: /s/ Laurence J. Cohen  
Laurence J. Cohen, Esq.  
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FAX: 608-204-0422  
Email: ecavell@ffrf.org  
*Pro hac vice* application pending

/s/ Ryan D. Jayne  
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Email: ryan@ffrf.org  
*Pro hac vice* application pending

# EXHIBIT 1

**RAMON S. SOUS**  
ATTORNEY AT LAW  
159 MAIN STREET  
SEYMOUR, CONNECTICUT 06483-3137  

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TELEPHONE (203) 888-0557  

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FAX (203) 888-5819

OCT 13 2015

September 29, 2015

Ms. Rebecca S. Markert  
Staff Attorney  
***Freedom from Religion Foundation***  
P.O. Box 750  
Madison, WI 53701

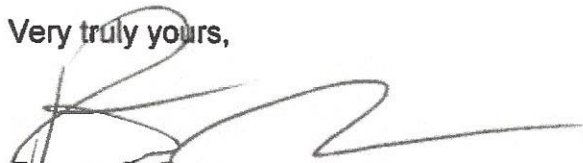
***Re: Angels on Display in Constitution Park***

Dear Attorney Markert:

Your letter of August 14, 2015 regarding the above mater has been forwarded to this office for response.

The City of Shelton has no policy for erecting displays in public parks per se nor does it have any application form for erecting displays in Constitution Park. The City merely receives request for permission and has a right to object. The requests for the last three (3) years for the light displays are hereby enclosed.

Very truly yours,



Ramon S. Sous  
Assistant Corporation Counsel  
City of Shelton and City Liaison to the FOI

RSS/acr  
Enclosures:

# EXHIBIT 2



*The American Legion  
Sutter-Terlizzi Post 16  
295 Bridgeport Avenue, P.O. Box 133  
Shelton, CT. 06484*

*Dave Gallagher  
Commander*

*James Hallegan  
Senior Vice  
Commander*

*Frank Santoro  
Junior Vice  
Commander*

*Al Sabetta  
Adjutant*

*Ken Hagan  
Finance Officer*

*Martin Howden  
Historian*

*Walter Bill  
Chaplin*

*Fred Suhy  
Sgt. of Arms*

*William Kozak  
Service Officer*

*Ron Dietman  
Past Commander*

*Executive  
Committee*

*Three Year Term  
Marty Hedglin  
Cliff Costello  
John Casey*

*Two Year Term  
Jeb Haveran  
Rolph D'Santi  
John Dougherty*

*One Year Term  
Jim Pinchuk  
Larry Kayfus  
Dave Gallagher*

November 21, 2014

To Whom It May Concern;

Post 16 of the American Legion is requesting permission to sponsor a light display on the property at Constitution Park for one month during the holiday season, starting December 2<sup>nd</sup>.

Thank you,

Al Sabetta  
Adjutant



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Sutter-Terlizzi Post 16  
295 Bridgeport Avenue, P.O. Box 133  
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John Casey*

*Two Year Term  
Jeb Haveran  
Ralph D Santi  
John Dougherty*

*One Year Term  
Jim Pinchuk  
Larry Kayfus  
Dave Gallagher*

November 15, 2013

To Whom It May Concern;

Post 16 of the American Legion is requesting permission to sponsor a light display on the property at Constitution Park for one month during the holiday season, starting December 2<sup>nd</sup>.

Thank you,

A handwritten signature in cursive script, appearing to read "Al Sabetta".

Al Sabetta  
Adjutant



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Jeb Haveran  
Ralph D'Santi  
John Dougherty*

*One Year Term  
Jim Pinchuk  
Larry Kayfus  
Dave Gallagher*

November 16, 2012

To Whom It May Concern;

Post 16 of the American Legion is requesting permission to sponsor a light display on the property at Constitution Park for one month during the holiday season, starting December 3<sup>rd</sup>.

Thank you,

Al Sabetta  
Adjutant

# EXHIBIT 3



# FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 • MADISON, WI 53701 • (608) 256-8900 • WWW.FFRF.ORG

December 3, 2015

**SENT VIA FAX AND U.S. MAIL:  
(203) 888-5819**

Mr. Ramon S. Sous, Esq.  
Assistant Corporation Counsel  
City of Shelton  
159 Main Street  
Seymour, CT 06483-3137

Re: Denial of Winter Solstice Display

Dear Mr. Sous:

We wrote to the City of Shelton regarding the City's policy for erecting displays in city parks and received a response from you on September 29. You indicated that the City has no policy per se, but has granted permission for private organizations to erect displays and has done so for at least the last three years. We understand the City has allowed the American Legion to erect a "lights display" in Constitution Park and has allowed Cub Scout Pack 24 to erect a nativity scene on Huntington Green, both pursuant to written applications .

Earlier this week, Jerry Bloom, a local FFRF member, requested permission to erect a Winter Solstice display on behalf of FFRF. After requesting the exact wording of the display, the City denied the request because it deemed FFRF's display "offensive to many." FFRF's display is an attractive banner that reads:

At this Season of the Winter Solstice, let reason prevail. There are no gods, no devils, no angels, no heaven or hell. There is only our natural world. Religion is but myth & superstition that hardens hearts & enslaves minds.

We are writing to urge the City to immediately reconsider this dubious decision and allow FFRF and its local member to erect this display. Because we would like our display to be placed well in advance of the Winter Solstice, December 22, time is of the essence. Please respond in writing within three (3) business days.

**Prohibiting speech based on viewpoint is unconstitutional**

The City of Shelton has created a public forum, a piece "of public property which the state has opened for use by the public as a place for expressive activity. The Constitution forbids a state from enforcing certain exclusions from a forum generally open to the public, even if it was not required to create the forum in

the first place.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45, 103 S. Ct. 948, 955, 74 L. Ed. 2d 794 (1983); see also *Widmar v. Vincent*, 454 U.S. 263, 102 S.Ct. 269, 70 L.Ed.2d 440 (1981); *City of Madison Joint Sch. Dist. v. Wisconsin Pub. Emp’t Relations Comm’n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976); *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975).

The City’s denial of our request to erect a Winter Solstice display on the basis of it being “offensive” is impermissible viewpoint-based discrimination. See, e.g., *Capitol Square Review Bd. v. Pinette*, 513 U.S. 753 (1995).

**This discrimination also violates the 1<sup>st</sup> Amendment and the Equal Protection Clause of the 14<sup>th</sup> Amendment**

This censorship is also a violation of the Equal Protection Clause: “Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.” *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 96, 92 S. Ct. 2286, 2290, 33 L. Ed. 2d 212 (1972).

In an Equal Protection case involving a fundamental right, such as free speech, the government must have a compelling government interest in burdening that right. “When a statutory provision burdens First Amendment rights, it must be justified by a compelling state interest. *Williams v. Rhodes*, 393 U.S., at 31, 89 S.Ct., at 10; *NAACP v. Button*, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963).” *Fed. Election Comm’n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 256, 107 S. Ct. 616, 627, 93 L. Ed. 2d 539 (1986). Obviously discriminating against speech the City dislikes is not a compelling interest.

Please investigate this matter and respond in writing within three (3) business days. We hope this can be immediately resolved by permitting FFRF to erect its display in Constitution Park.

Sincerely,



Ryan D. Jayne, Esq.  
Diane Uhl Legal Fellow  
Freedom From Religion Foundation