

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUE MERCIER, ELIZABETH J. ASH,
ANGELA BELCASTER, JANET BOHN, JULIE
CHAMBERLAIN, MAUREEN FREEDLAND, DAVID
GOODE, BETTY HAMMOND, CURT LEITZ,
CONSTANCE R. LONG, DAVID W. LONG,
MYRNA D. PEACOCK, BECKY POST,
JAMES L. REYNOLDS, ELLEN DODGE SEVERSON,
ERIC SEVERSON, LESLIE SLAUENWHITE,
HERMAN S. WIERSGALLA, HOWARD WIERSGALLA,
JAMES E. WIFFLER, ROBERT WINGATE,
HENRY ZUMACH, and FREEDOM FROM
RELIGION FOUNDATION, INC.,

Case No. 02-C-0376-C

Plaintiffs,

v.

CITY OF LACROSSE,

Defendant.

AMENDED COMPLAINT

The plaintiffs, Sue Mercier, Elizabeth J. Ash, Angela Belcaster, Janet Bohn, Julie Chamberlain, Maureen Freedland, David Goode, Betty Hammond, Curt Leitz, Constance R. Long, David W. Long, Myrna D. Peacock, Becky Post, James L. Reynolds, Ellen Dodge Severson, Eric Severson, Leslie Slauenwhite, Herman S. Wiersgalla, Howard Wiersgalla, James E. Wiffler, Robert Wingate, Henry Zumach, and Freedom From Religion Foundation, Inc. (“FFRF”), by their attorneys, LaFollette Godfrey & Kahn, for their Amended Complaint against the defendant, City of LaCrosse (the “City” or “LaCrosse”), allege as follows:

JURISDICTION

1. This is an action under 42 U.S.C. § 1983 to redress, by declaratory and injunctive relief, the deprivation, under color of state law, of rights guaranteed by the First and Fourteenth Amendments to the U.S. Constitution and article I, § 18 of the Wisconsin Constitution. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(3), and it has supplemental jurisdiction over the plaintiffs' state law claim under 28 U.S.C. § 1367(a).

PARTIES

2. Sue Mercier is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.

3. Elizabeth J. Ash is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.

4. Angela Belcaster is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.

5. Janet Bohn is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.

6. Julie Chamberlain is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.

7. Maureen Freedland is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.

8. David Goode is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.

9. Betty Hammond is an adult resident of Wisconsin.

10. Curt Leitz is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.

11. Constance R. Long is an adult resident of Wisconsin.
12. David W. Long is an adult resident of Wisconsin.
13. Myrna D. Peacock is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.
14. Becky Post is an adult resident of LaCrosse, Wisconsin.
15. James L. Reynolds is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.
16. Ellen Dodge Severson is an adult resident of LaCrosse, Wisconsin. She is a LaCrosse taxpayer.
17. Eric Severson is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.
18. Leslie Slauenwhite is an adult resident of Wisconsin.
19. Herman S. Wiersgalla is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.
20. Howard Wiersgalla is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.
21. James E. Wiffler is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.
22. Robert Wingate is an adult resident of LaCrosse, Wisconsin. He is a LaCrosse taxpayer.
23. Henry Zumach is an adult resident of Wisconsin.
24. Freedom From Religion Foundation, Inc. is a Wisconsin, non-stock corporation whose office is in Madison, Wisconsin. FFRF's purpose is to protect the fundamental constitutional principle of separation of church and state. FFRF brings this action on behalf of

its members, including some of the individual plaintiffs, who have been injured by the City's conduct described below.

25. Defendant City of LaCrosse is a city located in LaCrosse County, Wisconsin. The City is a body politic and corporate, with the power to sue and be sued.

TEN COMMANDMENTS MONUMENT

26. In 1899, the City purchased Cameron Park. The park occupies approximately one acre of land in downtown LaCrosse.

27. The City owns and maintains Cameron Park, which is located entirely within the corporate boundaries of the City.

28. In 1964, the Fraternal Order of Eagles (the "Eagles") donated a monument of the Ten Commandments (the "monument") to the City for display in Cameron Park. At the time, the Eagles had a national policy of donating Ten Commandments monuments to cities and towns throughout the country. The monument was dedicated in a ceremony held on June 19, 1965.

29. The monument is in the shape of a tombstone, resembling popular depictions of the biblical Ten Commandments. It is approximately five feet, four inches high, thirty-three inches wide, and ten inches deep. It is located approximately eight feet from the sidewalk that surrounds the park and is clearly visible from the sidewalk.

30. Written on the monument is an English translation of one version of the Ten Commandments. It reads as follows:

I AM the LORD thy God
Thou shalt have no other gods before me
Thou shalt not make for thyself any graven images
Thou shalt not take the Name of the Lord thy God in vain
Remember the Sabbath day to keep it holy
Honor thy father and thy mother that thy days may be long upon the land
which the Lord thy God giveth thee
Thou shalt not kill
Thou shalt not commit adultery

Thou shalt not steal
Thou shalt not bear false witness against thy neighbor
Thou shalt not covet thy neighbor's house.
Thou shalt not covet thy neighbor's wife nor his manservant, nor his
maidservant, nor his cattle, nor anything that is thy neighbor's.

The monument contains other symbols representative of the Jewish and Christian religions.

31. The Ten Commandments is a religious document, derived from the *Old Testament*, Exodus 20:2-17 and Deuteronomy 5:6-21.

32. There are no other religious, artistic, or cultural monuments near the Ten Commandments monument in Cameron Park.

33. Sue Mercier is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She would like to use Cameron Park. Because of the monument, however, she avoids and will continue to avoid using the park. Furthermore, she often alters her travel route to avoid walking or driving by the monument.

34. Elizabeth J. Ash is Unitarian Universalist. She is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She is a member of the People's Food Co-op (the "Co-op"), which is located across the street from Cameron Park. Ms. Ash is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When she sees the monument, she is distressed. The City's actions with respect to the monument have made her feel like she does not belong in LaCrosse.

35. Angela Belcaster is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She would like to shop at the Farmer's Market in Cameron Park. Because of the monument, however, she avoids and will continue to avoid using the park.

36. Janet Bohn is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. The City's actions with respect to the monument have made her feel like she does not belong in LaCrosse. Ms. Bohn would like to use Cameron Park, including the Farmer's Market at Cameron Park. Because of the monument, however, she avoids and will continue to avoid using the park. She shops at the Co-op. Ms. Bohn is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When she sees the monument, she is distressed.

37. Julie Chamberlain is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She is a member of the Co-op and enjoys the Farmer's Market at Cameron Park. Ms. Chamberlain is unable to avoid seeing the monument when shopping at the Co-op and Farmer's Market and conducting other business in downtown LaCrosse. When she sees the monument, she is distressed, angry, and uncomfortable.

38. Maureen Freedland is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She practices law near Cameron Park. She would like to use Cameron Park, including the Farmer's Market at Cameron Park. Because of the monument, however, she avoids and will continue to avoid using the park.

39. David Goode is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. He is a member of the Co-op, and he banks at Wells Fargo Bank, both of which are located across the street from Cameron Park. Mr. Goode is unable to avoid seeing the monument when shopping at the Co-op, banking at Wells Fargo, and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

40. Betty Hammond is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She is a member of the Co-op, and she banks at Wells Fargo Bank, both of which are located across the street from Cameron Park.

Ms. Hammond also likes to shop at the Farmer's Market at Cameron Park. She is unable to bank at Wells Fargo and shop at the Co-op and the Farmer's Market without seeing the monument. Because of the monument, she avoids and will continue to avoid using the park.

41. Curt Leitz is a Catholic. Mr. Leitz is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. He is a member of the Co-op. Mr. Leitz is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed. Mr. Leitz has avoided taking his friends to the park because of the monument.

42. Constance R. Long is deeply offended and distressed by the location of the monument on City property because she believes that it constitutes the City's endorsement of religion. As an artist, she would like to participate in the Farmer's Market in Cameron Park. Because of the monument, however, she avoids and will continue to avoid using the park, missing opportunities to sell her work.

43. David W. Long is deeply offended by the monument's location because he believes that it constitutes the City's endorsement of religion. Mr. Long is a member of the United States Navy – honorably discharged. As a military officer, he was sworn to uphold the U.S. Constitution. He believes that the monument violates the Constitution. Mr. Long would like to use Cameron Park. Because of the monument, however, he will avoid using the park.

44. Myrna D. Peacock is Jewish. She is, and has for a long time been, deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She is a member of the Co-op. Mrs. Peacock is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When she sees the monument, she is distressed.

45. Becky Post is a Unitarian Universalist. She is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She shops at the Co-op. Ms. Post is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When she sees the monument, she is distressed. She would like to be able to buy a sandwich at the Co-op and then cross the street to Cameron Park to eat her sandwich. She also would like to shop at the Farmer's Market in Cameron Park. Because of the monument, however, she avoids and will continue to avoid using the park.

46. James L. Reynolds is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. Mr. Reynolds would like to use Cameron Park without being subjected to an obvious endorsement of religion. Because of the monument, however, he tries to avoid using the park and is uncomfortable when confronted by the monument. Mr. Reynolds is unable to avoid seeing the monument when shopping at the Co-op or the Farmer's Market, attending secular meetings, gatherings, and vigils in the park, and when conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

47. Ellen Dodge Severson is a Unitarian Universalist. Ms. Severson is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She is a member of the Co-op. Ms. Severson is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When she sees the monument, she is distressed.

48. Eric Severson is a Unitarian Universalist. He is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. Mr. Severson would like to use Cameron Park. Because of the monument, however, he avoids and will continue to avoid using the park. He is a member of the Co-op. Mr. Severson is unable

to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

49. Leslie Slauenwhite is deeply offended by the monument because she believes that it constitutes the City's endorsement of religion. She has two children. She would like to take her children to Cameron Park for picnics and other events. Because of the monument, however, she avoids and will continue to avoid using the park.

50. Herman S. Wiersgalla is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. He is a member of the Co-op. Mr. Wiersgalla is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

51. Howard Wiersgalla is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. He is a member of the Co-op. Mr. Wiersgalla is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

52. James E. Wiffler is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. He is a member of the Co-op. Mr. Wiffler is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

53. Robert Wingate is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. Mr. Wingate would like to use Cameron Park. Because of the monument, however, he avoids and will continue to avoid using the park. He is a member of the Co-op. Mr. Wingate is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

54. Henry Zumach is deeply offended by the monument because he believes that it constitutes the City's endorsement of religion. Mr. Zumach would like to use Cameron Park. Because of the monument, however, he avoids and will continue to avoid using the park. He is a member of the Co-op. Mr. Zumach is unable to avoid seeing the monument when shopping at the Co-op and conducting other business in downtown LaCrosse. When he sees the monument, he is distressed.

55. FFRF members, including some of the plaintiffs in this action, come into contact with, or would come into contact with, the monument by walking or driving by the park or by using the park for recreational purposes. Those FFRF members are offended by the monument because they believe that it constitutes the City's endorsement of religion, in violation of the U.S. and Wisconsin Constitutions.

56. LaCrosse owns and is responsible for the display and maintenance of the monument, and it has the authority to remove it. FFRF has asked the City on several occasions, on behalf of its members, to remove the monument, and the LaCrosse City Council expressly has refused to do so. At all times, the City's actions have been taken under color of law.

CLAIMS FOR RELIEF

57. The monument is profoundly religious, replete with messages that are unequivocally religious in nature. Its display on public property has the primary purpose and effect of advancing religion. In addition to constituting a government preference for religion over non-religion, the monument constitutes a government preference for certain religions, Judaism and Christianity, over other religions.

58. By displaying the monument on public property, LaCrosse violates the First Amendment to the U.S. Constitution and article I, § 18 of the Wisconsin Constitution.

WHEREFORE, the plaintiffs request that the Court:

A. Enter a declaratory judgment that the Ten Commandments monument in Cameron Park in LaCrosse, Wisconsin violates the First Amendment to the U.S. Constitution and article I, § 18 of the Wisconsin Constitution;

B. Enter a permanent injunction prohibiting the City of LaCrosse from continuing to display the monument on any City-owned property;

C. Award the plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and,

D. Award the plaintiffs such other and further relief as is appropriate under the circumstances.

Dated this 7th day of August, 2002.

LA FOLLETTE GODFREY & KAHN

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