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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UTAH GOSPEL MISSION, FIRST	:	
UNITARIAN CHURCH OF SALT LAKE	:	
CITY, SHUNDAHAI NETWORK, UTAH	:	
NATIONAL ORGANIZATION FOR WOMEN,	:	
and LEE J. SIEGEL,	:	AMENDED COMPLAINT
Plaintiffs,	:	
vs.	:	
	:	Civil No. 2:03cv00688 DAK
SALT LAKE CITY CORPORATION,	:	
a Municipal Corporation; ROSS C. "ROCKY"	:	
ANDERSON, Mayor of Salt Lake City, in his	:	Hon. Dale A. Kimball
official capacity; and the CHURCH OF JESUS	:	
CHRIST OF LATTER-DAY SAINTS,	:	
	:	
Defendants.	:	
	:	
	:	
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1. This action arises from the extraordinary efforts undertaken by Salt Lake City ("City") to avoid the holding in *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*,

308 F.3d 1114 (10th Cir. 2002) (“*Main Street I*”), and to protect and advance the interests of the Church of Jesus Christ of Latter-Day Saints (“LDS Church” or “Church”) that are affected by that decision. The dispute involves a downtown pedestrian plaza recently built over a portion of Main Street in the heart of downtown Salt Lake City that was sold to the Church in 1999 (“Main Street Plaza” or “Plaza”). In connection with that sale, the City sought to impose patently unconstitutional speech restrictions on the Plaza by characterizing it as “private,” even though the City reserved an easement (“Easement” or “Pedestrian Easement”) and thereby maintained a public right of way through the property. In *Main Street I*, the U.S. Court of Appeals for the Tenth Circuit held that the Plaza was unquestionably a public forum notwithstanding the City’s characterization of the property as private, and struck down the restrictions on speech as unconstitutional, noting that “the City may not exchange the public’s constitutional rights even for other public benefits such as the revenue from the sale.”

2. Notwithstanding the Court of Appeals’ clear holding and instruction, Salt Lake City has tried once again to do exactly what the court forbade: to “privatize” a central block of historic Main Street and thereby extinguish the public’s constitutional rights. Rather than assume its constitutional obligation to regulate this quintessential public space pursuant to reasonable content-neutral time, place, and manner regulations, the City acquiesced to the LDS Church’s demands that the City abandon the Easement and thus created an exclusive and uniquely powerful platform for the Church to promulgate its message on a range of social, political and religious issues while prohibiting plaintiffs and others from sharing their own messages on the same issues in the same place and in the same manner. The City’s motives for relinquishing the Easement are a façade for its improper purpose of granting the LDS Church an exclusive license to control speech on Main Street and to stifle dissent. This type of viewpoint

discrimination is improper and amounts to an end run around the Court of Appeals' decision. City officials have worked in concert with Church officials to preserve the essential attributes of a public forum without the attendant responsibility of managing it in a viewpoint neutral fashion. In effect, the City wants to have its cake and eat it too.

3. Plaintiffs allege that these actions violate the First Amendment because they reinstitute the very same restrictions on speech that were declared unconstitutional by the Court of Appeals – regardless of the formalities of title to the property. The Plaza remains the quintessential public forum, and the City and/or the LDS Church are constrained by the First Amendment from unreasonably interfering with First Amendment Rights. To the extent the police power over Main Street has been delegated to the LDS Church, the Church has assumed the mantle of government and is subject to First Amendment limitations. Plaintiffs further allege that the City's actions violate the Establishment Clause because those actions (a) have the purpose and effect of promoting religion, and, in this case, a particular religion; (b) impermissibly entangle church and state by giving the Church authority over an open-space pedestrian plaza in the heart of downtown Salt Lake City; and (c) impermissibly endorse religion by conveying a message to non-Mormons that they are outsiders who are not full members of their political community. The secular interests purportedly advanced by the transaction are a sham designed to deflect attention from the City's improper sectarian motives for entering into this agreement.

JURISDICTION AND VENUE

4. This action is based on, and seeks to redress deprivations under color of law of rights and privileges secured by, the First and Fourteenth Amendments to the United States Constitution. This action thus arises under the laws and the Constitution of the United States. In

addition, declaratory relief is appropriate in this Court pursuant to 28 U.S.C. §§ 2201-02. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 2201-02, and 42 U.S.C. § 1983. The Court has supplemental jurisdiction over the state law claims.

5. Venue for this action properly lies in the Central Division of this Judicial District pursuant to 28 U.S.C. § 1391(b) because defendants resides in Salt Lake County, State of Utah, and within the Central Division of this Judicial District, and all or substantially all of the events that give rise to the claims in this action occurred in this District.

PARTIES

PLAINTIFFS

6. Plaintiff Utah Gospel Mission is a religious organization founded in 1898 that is organized and existing under the laws of the State of California. The organization claims 500 mission volunteers over the last twenty years. The Utah Gospel Mission is engaged in proselytizing, church planting, and other religious activities in the State of Utah. Their views are often at odds with those of the LDS Church, and are often critical of LDS Church positions. Among other things, Utah Gospel Mission regularly seeks to distribute religious literature and otherwise share its message of faith to pedestrians on the public sidewalks in downtown Salt Lake City. Kurt Van Gorden is a resident of the State of California, and an active member of Utah Gospel Mission. As a Baptist minister, Mr. Gorden conducts his ministry in Utah under the name Utah Gospel Mission. In the past, Mr. Gorden has freely used the Main Street Plaza area to distribute religious literature. When the LDS Church placed restrictions on the Plaza, he continued to distribute literature. On April 6, 2002, Mr. Gorden was asked to stop leafleting on the Plaza by a security guard. After he expressed that he had the right to distribute religious literature on the Plaza, the security guard called for a Salt Lake City police officer. The officer

asked Mr. Gordon to leave the Plaza, and explained that he would be cited for trespass if he refused. When Mr. Gordon proceeded to ask the officer if he would like some of his religious literature, the officer then cited Mr. Gordon for trespass. Because Mr. Gordon's family was with him at the time, Mr. Gordon left the Plaza and did not pursue the issue. Mr. Gordon returned to the Plaza the next day, however, to continue distributing his literature. LDS security guards again asked him to leave the Plaza and called a Salt Lake City police officer. Subsequently, Mr. Gordon was arrested and taken to jail after he refused to leave the Plaza. The decision of Salt Lake City to abandon the Pedestrian Easement on Main Street Plaza has placed Mr. Gordon in danger of being arrested again for distributing literature on the Plaza. The City's decision to relinquish the Easement and to allow the LDS Church to prohibit speech is a direct restraint on the rights of the members of Utah Gospel Mission to disseminate their views and to criticize the LDS Church. The Utah Gospel Mission, through Mr. Gordon and its other members, allege that the City has singled out the LDS Church for special treatment in this dispute, and that non-Mormons like them are both disenfranchised and made to feel like outsiders in a government and City dominated by one religious point of view.

7. Plaintiff First Unitarian Church of Salt Lake City ("Unitarian Church") is a religious corporation organized and existing under the laws of the State of Utah, with its principal place of business in Salt Lake City, Salt Lake County, State of Utah. The Unitarian Church is dedicated to advancing causes of spiritual enlightenment and social justice for all individuals regardless of race, gender, disability, sexual orientation or other status. The Unitarian Church wishes to pursue its objectives through public dialogue and demonstrations on an equal footing with the LDS Church, but cannot do so because of the City's decision to provide the LDS Church with an exclusive, preferred platform on Main Street Plaza. Moreover, agents

or representatives of the LDS Church have in the past escorted individual members of the Unitarian Church from LDS Church property for arbitrary and capricious reasons, even though these individuals were engaged in entirely legal conduct. Those members therefore reasonably fear that they will be barred temporarily or even permanently from enjoying access to and use of Main Street Plaza unless the Court invalidates the City's unconstitutional delegation of that discretionary function to the LDS Church. Finally, members of the Unitarian Church have expressed their strong opposition to the governmental endorsement of one religion inherent in the restrictions the City allowed to be imposed over Main Street Plaza, to such an extent that although they have regularly traveled on Main Street in the past and would otherwise continue to visit and enjoy the pedestrian mall on Main Street, they will take pains to avoid even traversing Main Street Plaza so as not to be confronted with unwelcome governmentally-endorsed religious messages. The Unitarian Church brings this action in its own capacity and in a representative capacity on behalf of its members. The Unitarian Church, through its members, allege that the City has singled out the LDS Church for special treatment in this dispute, and that non-Mormons like them are both disenfranchised and made to feel like outsiders in a government and City dominated by one religious point of view.

8. Plaintiff Shundahai Network is a community-based Nevada non-profit organization involved in public education, organizing, and political advocacy aimed at halting the nuclear arms race and encouraging nuclear disarmament. The organization maintains an office in Salt Lake City. The organization claims 150 members in Utah—most of whom reside in the Salt Lake City area. The Shundahai Network carries out its activities by distributing educational literature, gathering signatures on petitions addressed to public officials, staging rallies, and holding public meetings and other activities directed to generating public discussion

and activity on behalf of nuclear arms control. In order to defray the cost of its political activities, the organization seeks and accepts street donations. All of these activities are now prohibited on Main Street Plaza. The Shundahai Network intends to continue to advocate its positions on nuclear arms control through public dialogue and demonstrations in Salt Lake City on Main Street Plaza and on equal footing with the LDS Church, but cannot do so because of the City's actions, which have given the LDS Church an exclusive, preferred platform for the promulgation of its views.

9. The City's decision to relinquish the Easement and to allow the LDS Church to prohibit speech is a direct restraint on the rights of the members of the Shundahai Network to disseminate their views and engage in a dialog with the LDS Church about its policies and criticize the Church's support of political candidates who favor nuclear proliferation. Members of the Shundahai Network allege that Salt Lake City's abandonment of the Pedestrian Easement across Main Street Plaza to the LDS Church favors one religion over all other groups in Utah. Members of the Shundahai Network wish to communicate their views on nuclear waste storage in Utah to members of the public on Main Street Plaza. The Shundahai Network believes this venue is appropriate because it allows the organization to target a large audience of Salt Lake City residents. Members of the Shundahai Network have used Main Street Plaza in the past to communicate anti-nuclear waste messages. Members of the Shundahai Network fear they will be arrested if they continue to use Main Street Plaza to express their messages because of Salt Lake City's decision to abandon the Easement and therefore allow the Church to control who speaks on the Plaza. These members also reasonably fear that they will be prohibited from enjoying access to and use of Main Street Plaza.

10. Plaintiff Utah National Organization for Women (“Utah NOW”) is a feminist organization dedicated to securing and preserving equal rights for women. In the 1980s, Utah NOW was actively involved in demonstrations on Main Street concerning the LDS Church’s positions on equal rights for women and a woman’s right to choose. Utah NOW intends to continue to advocate its positions on women’s issues, and wishes to do so on an equal footing with the LDS Church. Utah NOW alleges that Salt Lake City’s decision to relinquish the Pedestrian Easement on Main Street Plaza to the LDS Church was made to protect the Church from criticism of its policies, and has the effect of promoting and advancing the interests of the LDS Church over the interests of the public and the interests of persons who hold views that are critical of the Church. Members of Utah NOW allege that the abandonment of the Pedestrian Easement on the Plaza has resulted in the endorsement of one religious message over all other expressive messages in Salt Lake City. Because of the City’s decision to abandon the Easement, members of Utah NOW who have regularly traveled on Main Street Plaza in the past and would otherwise continue to visit and enjoy the pedestrian mall on Main Street will take all possible measures to avoid even using the sidewalks across Main Street Plaza so as not to be confronted with unwelcome governmentally-sanctioned religious messages.

11. Plaintiff Lee J. Siegel is an individual taxpayer and resident of Salt Lake County. Like the other plaintiffs in this case, Mr. Siegel is directly restrained from exercising his First Amendment rights on the Plaza. He has participated in First Amendment activities on the Plaza in the past to protest the Church’s actions in the Main Street controversy, and will continue to do so if allowed. He also alleges that the City has singled out the LDS Church for special treatment in this dispute, and that non-Mormons like him are both disenfranchised and made to feel like outsiders in a government and City dominated by one religious point of view. Because the Plaza

and adjacent LDS Church properties serve as a three-block-wide, LDS Church-owned bottleneck between downtown Salt Lake City and areas to the north, Mr. Siegel and other pedestrians who must traverse the Plaza will be subject to only LDS Church messages which, because of Salt Lake City's abandonment of the Pedestrian Easement, will effectively be sanctioned and endorsed by the City. Mr. Siegel will take pains to avoid visiting Main Street Plaza, as he has no desire to be confronted with and hear unwelcome governmentally-endorsed religious messages.

DEFENDANTS

12. Defendant Ross "Rocky" Anderson is the Mayor of Salt Lake City. He is sued in his official capacity. The Mayor and his predecessor in office (both singly and collectively referred to hereinafter as the "Mayor") were acting under color of law at all times relevant to this complaint.

13. Defendant Salt Lake City Corporation ("City") is a municipal corporation organized and existing under the laws of the State of Utah. The City is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

14. Defendant Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints is the property-holding corporation that conducts the temporal affairs of the Church of Jesus Christ of Latter-Day Saints. The Church is an unincorporated religious association sometimes called the Mormon Church. The Corporation of the Presiding Bishop is a tax-exempt, non-profit religious entity under § 501 (c) (3) of the Internal Revenue Code. For purposes of this complaint, these entities will be collectively referred to as "the Church." The Church is a person within the meaning of 42 U.S.C. § 1983 and has been acting under color of law in its administration of Main Street Plaza.

FACTUAL ALLEGATIONS

A. The Circumstances and Terms of the Original Sale of Main Street to the LDS Church and the Plaza's Objective Attributes.

15. The relevant facts set forth in this background section are not in dispute. They are set forth in detail in the reported Court of Appeals decision in *Main Street I*. Both the original and the present allegations in this case concern a portion of Main Street in downtown Salt Lake City that the City closed and sold to the LDS Church. The sale was formally to the Corporation of the Presiding Bishop, a corporate entity wholly owned by the LDS Church.

16. Main Street runs north-south through downtown Salt Lake City. The portion sold to the LDS Church is bounded on the north by North Temple Street and on the south by South Temple Street. Directly to the north along Main Street lies a residential neighborhood rising along a hill on the north end of town. The neighborhood is comprised of high-rise and low-rise apartment buildings and single family homes. Located at the crest of the hill is the State Capitol and numerous government buildings. Both the State Capitol and the residential neighborhood are a short walk from the Plaza. To the south is the City's central business and commercial district, which includes two large shopping malls as well as office and residential high-rises.

17. The LDS Church owns all of the property on the two city blocks on the east and west sides of this portion of the former Main Street. On these blocks the LDS Church maintains a number of important historical, administrative, and worship facilities. The west block is called "Temple Square" and contains the Mormon Tabernacle and the Salt Lake Temple; the east block houses the LDS Church administration buildings. Temple Square and related attractions are a popular tourist attraction. The LDS Church Conference Center is located directly north of the Plaza on North Temple and Main Streets. The LDS Church, through its subsidiary, also owns

most of the commercial property south of the Plaza on South Temple and along Main Street from South Temple to 100 South.

18. In 1995, the City sold the LDS Church the subsurface rights to this portion of Main Street, which the Church eventually developed into an underground parking garage. The sale agreement for that transaction also gave the LDS Church a right of first refusal on the surface property, if the City ever decided to sell it.

19. In 1998, the City explored the possibility of closing the surface portion of Main Street and selling it to the LDS Church for the construction of a pedestrian plaza. On December 1, 1998, City and LDS Church officials held a joint news conference to announce “a proposal to develop an open-space pedestrian plaza” on Main Street between North and South Temple. The LDS Church thereafter filed a petition with the City for street closure and plans with the City Planning Commission for the construction of a pedestrian plaza.

20. On April 13, 1999, the City Council approved the closure and sale of the Main Street block to the LDS Church, subject to certain conditions. The first condition, which reflected a recommendation from the Planning Commission, was that the City retain a perpetual pedestrian easement for public use, “planned and improved so as to maintain, encourage, and invite public use.” In a further effort to secure perpetual public use and access, the City Council also insisted that the City retain a Right of Reverter to the property, which would be triggered if the LDS Church failed to keep the Plaza open for public use as promised. Notwithstanding a specific recommendation from the Salt Lake City Planning Commission, however, the City Council failed to include in the Ordinance any condition requiring that the Plaza be regulated no more strictly than a public park.

21. The City subsequently recorded a Special Warranty Deed (“Deed”) and Reservation of Easement (“Pedestrian Easement” or “Easement”) conveying the Main Street surface property to the LDS Church.

22. Although the Easement guaranteed a public right of way through the property, it otherwise granted the LDS Church unfettered discretion to control all other conduct on the Plaza—including First Amendment activity. For example, the Easement gave the LDS Church the right to exclude anyone who had previously engaged in any “prohibited” conduct while using the Easement. The City also reserved utility easements, access for emergency and police vehicles, and a view corridor provision that restricted the erection of buildings on the Plaza. Finally, as required by the City Council, the Easement contained a Right of Reverter, which provided that ownership of the Plaza would revert to the City if the LDS Church “fail[ed] to use the Property for the purposes set forth” in the Deed.

23. After the deal was finalized, the LDS Church reconstructed the former street and sidewalks at its own expense. These renovations resulted in an attractive pedestrian plaza, with paved walking areas accented by planters, benches, and waterfalls, a large reflecting pool, and changes in grade. Despite its prior assurances to the City that Main Street would remain an open-space pedestrian plaza, the Church consecrated the Plaza and began referring to it as an “ecclesiastical park” and as the “Church Plaza.” The LDS Church uses the Plaza for religiously oriented exhibits, dissemination of information, and special events, and also as an additional entrance to the Temple Square.

24. Main Street Plaza functions as a funnel between the residential neighborhood to the North of the Plaza and the downtown business district, including the Crossroads and ZCMI Center shopping malls. High-rise office buildings run the length of Main Street as well as a

number of major hotels and the United States Courthouse. Directly South of the Plaza on both sides of Main Street, many of the buildings are owned by the LDS Church through a subsidiary corporation. The commercial area south of the Plaza is being redeveloped for mixed commercial/residential use by the LDS Church and will further incorporate the Plaza into downtown commercial, residential, visitor and transportation grid of the city. The Church intends to bring a downtown campus of Brigham Young University to this area of the City. Both City and Church officials reiterated on numerous occasions at the time of the original Main Street Plaza transaction that the City approved the sale in order to increase usable public open space in the downtown area, encourage pedestrian traffic generally, stimulate business activity, and provide a zone closed to automobile traffic that could serve as a buffer between the residential area to the north of the plaza and the business areas to the south. Church officials have reiterated these very same objectives in connection with the current development plans for Main Street South.

25. Preservation of a public easement was particularly important to the City because of the role the City envisioned an easement would play in the character and development of downtown Salt Lake City. Although the City wanted to close Main Street to automobile traffic, it simultaneously wanted to preserve and encourage pedestrian traffic in the heart of downtown. The purpose of the Pedestrian Easement in the Main Street Plaza deal was to provide a pedestrian thoroughway that is part of the City's transportation grid. In this respect, it is identical to the purpose that the sidewalks along that portion of Main Street previously served.

26. The Plaza as a whole does more than merely provide a corridor between the residential neighborhood to the North and the commercial district to the South. It serves as a park where the public is invited to gather, relax, and enjoy the open space. There are flowerbeds,

a reflecting pool and fountain, and even a place where tables and chairs are set out for lunch and leisure. There is also a giant statue of Brigham Young, an important historical figure and first governor of Utah that anchors the Plaza on the South end. This monument formerly sat on an island in the middle of Main Street. The Plaza has the appearance and character of a centrally located downtown park that is landscaped and designed for public use.

27. The Plaza provides a unique forum for the distribution of literature and social intercourse because people are more likely to gather and are more approachable than they might be when they pass by on the street. In addition, the Plaza is a unique site because it anchors the world headquarters of the Mormon Church. The LDS Church is a major political player in Utah and engaging in First Amendment activity on the Plaza is a very direct way of influencing public policy by bringing pressure on the Church. It is like protesting in front of City Hall or the State Capitol and can generate publicity and achieve results.

B. The Controversy Over How to Resolve the Dispute Between the City and the LDS Church Following the Court of Appeals' Decision in *Main Street I*.

28. After *Main Street I* was decided, the City and the Church charted very different courses over how to preserve their rights under the terms of the original transaction. The LDS Church filed a petition for rehearing and a petition for *certiorari* to the United States Supreme Court. The City did not file its own petitions. Both petitions were eventually denied. While these petitions were pending, the LDS Church initiated a widely publicized campaign to protect its interests in the Plaza and to reassert control over First Amendment activity. It hoped either to reinstitute the First Amendment restrictions on the Plaza or to take complete title to the property untethered from the Easement reserved by the City. The Mayor of Salt Lake City, Ross “Rocky” Anderson (“Mayor”), and the person responsible for implementing the decision in *Main Street I*, and enforcing the terms of the original warranty deed, rejected this position out of hand for legal,

ethical, and public policy reasons. In the ensuing months, Mayor Anderson and the LDS Church engaged in a vitriolic and widely reported dispute that (according to the Mayor) threatened to tear the City apart along religious lines.

29. Ultimately, the Church would prevail and the Mayor would be forced to abandon his decision to follow what he described as the “right” course. Time and time again, the Mayor attributed his decision to capitulate to the undue influence of the LDS Church over the affairs of government and to the bias of the all-LDS City Council. He also criticized the tactics of the LDS Church for turning their cause into a religious crusade and using its leverage to put the Church’s interests ahead of the interests of the public. In a City with a long history of religious divisiveness, it was plain to the Mayor and the public that the dispute threatened to re-open old wounds. Mayor Anderson was acutely aware of this danger and yielded to the Church’s demands even though he fully understood that the City’s interest in the Plaza were being unfairly subordinated. The Mayor’s decision was widely perceived as resulting from the Church’s undue influence. A poll taken after the completion of the transaction showed that 39% of Salt Lake City residents, and 68% of non-Mormons, agreed that the deal resulted from undue influence of the LDS Church and violated the Establishment Clause. The polls were conducted by the LDS Church media, the *Deseret News*, and the local broadcast media station, KSL-TV (NBC).

30. To properly understand the Mayor’s decision to relinquish the Easement, his decision must be viewed in the context of the magnitude of the dispute between the LDS Church and the City – vis-a-vis the Mayor. On October 10, 2002, the day following the Court of Appeals’ decision, Mayor Anderson held a news conference on the Plaza announcing that the City would not seek further review of the decision and that the City had no plans to relinquish the easement. The Mayor also announced that his office would formulate reasonable time, place,

and manner restrictions. Articles in the *Salt Lake Tribune* and the *Deseret News* both quote the Mayor as saying that “*it would be a betrayal*” [of the public’s interest] to relinquish the easement. In the ensuing months, the Mayor was to repeat this candid admission many times in what was to become a widely reported dispute with the LDS Church and several outspoken members of the City Council who were critical of his decision.

31. In a carefully planned media campaign complete with press releases, interviews with reporters, and television and radio appearances, the Mayor repeatedly rejected demands from his critics to relinquish the Easement. In a statement typical of dozens that are attributed to him following the Court of Appeals’ decision, Mayor Anderson was quoted as saying, “If [a candidate for mayor] promised to return [the Easement to the Church] they would get 5% of the vote. Even LDS Church members would see through that – No. 1 as pandering, and No. 2 as being completely unethical.” This particular statement is representative of the Mayor’s many other statements and acts that place his later actions into context and raise serious questions about how and why the Church was eventually given control over the Plaza.

32. On October 22, 2002, Mayor Anderson released an eight-page statement rejecting LDS Church proposals to abandon the easement. In an announcement accompanying the release of this statement, the Mayor stated that the City instead would draft restrictions on conduct and speech for the easement, “but ones that do not protect the Church from competition or expression it finds offensive.” The Mayor promised to define the Easement and to outline time, place, and manner regulations. In his eight-page written statement, the Mayor explained that he was “faced with the decision as to whether 1) Salt Lake City should simply transfer the easement to the [LDS Church] so the contemplated restrictions can be given effect, 2) Salt Lake City and the [LDS Church] should attempt to restructure the transaction in a manner that would give effect to

the essential elements of the agreement reached between them, including assured public access and the restrictions on expressive activities, or 3) Salt Lake City should simply act according to the terms of the Special Warranty Deed, and according to the opinion of the Court of Appeals, formulate reasonable, content-neutral restrictions as to time, place, and manner that will conform to the requirements of the Constitution.” The Mayor concluded that “[b]ased on the fundamental ethical principle that parties to an agreement should, to the extent possible, give effect to the promises each party made to the other, and based on the commitments of the City Council and the [former Mayor’s Administration] to the community as a whole, I am compelled to retain the easement on behalf of Salt Lake City, and proceed according to the terms of the Special Warranty Deed (except those that have been held by the Court of Appeals to be unconstitutional), and work with the Salt Lake City Council to formulate constitutionally permissible time, place, and manner restrictions regarding conduct and other expressive activities on the Main Street Plaza.” Mayor Anderson emphasized that “to simply convey the easement to the [LDS Church] would . . . violate that principle” and “*would be a betrayal of the interests of Salt Lake City and of the public.*”

33. In choosing to retain the Easement on behalf of the City, Mayor Anderson explained in his October 22nd statement that the critical question is “whether the essential terms of the agreement between the parties—the purchase and sale of the property, the restrictions on conduct and other expressive activities, and the legal assurance of public access—can or should be given effect by restructuring the way in which the deal was put together initially.” The Mayor concluded that he was “persuaded that such a restructuring would not only be constitutionally suspect but that it would not comport with the principle that the parties should live up to their agreement.” The Mayor also explained that “to simply convey the easement to the [LDS

Church] would also violate that principle.” In addition, the Mayor paid special attention to the import of the severability clause of the Special Warranty Deed, stating that “the parties agreed not only to (1) the purchase and sale, (2) the restrictions on conduct and other expressive activities, and (3) the reservation to Salt Lake City of the easement; they also expressly agreed that if any term or restriction set forth in the Special Warranty Deed is held by a court to be unconstitutional, the other terms are to be binding.”

34. At this juncture, the LDS Church could have sought relief in State Court seeking rescission or enforcement of the Special Warranty Deed, and particularly, an interpretation of the severability clause. The interpretation urged by the Church was that the Easement itself, rather than the restrictions on speech, were severable. The Mayor rejected this interpretation based on an opinion by the City Attorney, which was subsequently widely distributed and made available to the press. Although the City and Church purported to ultimately resolve this dispute as part of a later transaction extinguishing the Easement, the Church’s position was never taken seriously by the City and the threat of litigation never materialized. In fact, the City also elected not to seek a State Court interpretation of the Special Warranty Deed even though this may have given the City a less controversial way out of the dispute with the Church by leaving it in the hands of the courts. The City chose not to go this route because the Mayor was absolutely resolved that the public interest would be disserved by taking any steps that would lead to the relinquishment or extinguishment of the Easement.

35. Instead of pursuing its remedies in the State Court, the LDS Church and the City Council simultaneously took steps to undermine the Mayor’s decision. The Church moved quickly to convert a contract dispute into a religious dispute. LDS Church officials widely distributed corporate portfolio report-quality information packets to leaders of other faiths,

business leaders, community council members, and many others in Salt Lake and Davis Counties. One of the brochures is titled *Realizing a Vision – the New Church Plaza*. The materials distributed by the Church included a letter from LDS Church President Hinckley describing how the LDS Church had dedicated the Plaza after it first opened as a place to contemplate God and not as a place for “confrontational and noisy demonstrations.” The dedication consecrates the Plaza as sacred. President Hinckley explained that “the Prayer of Dedication included a plea that the Plaza be seen as a place of peace – an oasis in the midst of this bustling city – an island of quiet beauty where the weary may sit and contemplate the things of God and the beauties of nature.” The President’s letter to the public was subsequently printed in Salt Lake City’s two major daily newspapers.

36. This title was carefully chosen to convey the Church’s belief that God through his “Prophet,” LDS President Gordon Hinckley, has endorsed the Church’s position on the Plaza controversy. Under LDS Church doctrine, “God continues to send living prophets” who “speaks for God,” with “divine power and authority.” *See Living Prophets*, available at www.mormon.org/learn (last viewed Nov. 5, 2003). As the current “Prophet,” President Hinckley “communicates God’s will to all people”, “receives revelations and directions from the Lord,” and “may see into the future in order to warn the world of coming events.” Thus, when President Hinckley speaks to Church followers, he speaks not only with the authority of God, but God purportedly speaks directly through him by revealing “visions.” *See Summary of Beliefs* available at www.mormon.org/learn (last viewed Nov. 5, 2003). Questioning the edicts of LDS authorities is viewed as subversive. Dissent is not tolerated and is considered heretical. It is a familiar axiom in the LDS Church community that “[w]hen the Prophet speaks, the debate is over.”

37. The LDS Church, through its subsidiary newspaper the *Deseret News*, also mounted a media campaign critical of the Mayor. The *Deseret News* is the leading afternoon daily in Salt Lake City and it reported on the Plaza controversy on an almost daily basis for many months following the Court of Appeals' decision. From the start, the editorial coverage was critical of the Mayor and supportive of the Church. By contrast, *The Salt Lake Tribune* supported the Mayor. The news coverage in the LDS owned paper was more balanced than the editorial coverage, but the Church point of view came across clearly in articles targeting the Mayor. In one representative account reported by the *Deseret News*, LDS Church lawyers accused Mayor Anderson of having ulterior motives for choosing not to surrender the easement, including a desire to gain an extra park in the city at the expense of the LDS Church. In an article titled "Rocky Viewed as Plaza Profiteer," Church attorneys suggested that "the mayor was acting more as a profiteer than a crusader for justice." The article also suggests that the Mayor did not fear whatever backlash his decision to retain the easement might evoke from the Mormon community. The article reported that "Mr. Anderson laughs at the suggestion that a Republican rival could defeat him by promising to return the easement to the church." LDS Church officials were also critical of the Mayor in many of these articles. Readers' letters critical of the Mayor were also printed regularly. The controversy also dominated the broadcast media, a significant part of which (one of two daily newspapers and the leading broadcast network affiliate) is owned and controlled by the Church. In the months following the Court of Appeals' decision in *Main Street I*, hardly a day went by without some development in the Plaza controversy. Charges of bias, betrayal and unethical conduct were regularly made by the Mayor and widely reported.

38. Simultaneously, the City Council took steps to determine whether it had the authority to rewrite the terms of the original deed and relinquish the Easement. The Council

authorized funds and eventually hired its own attorney for this purpose. Then-Council Chair Buhler and Councilman Jergensen issued public statements critical of the Mayor's decision and in support of the Church's position. The City Council's actions sparked a widely publicized dispute between the Mayor and individual Council members, including charges of religious bias on the part of the Mayor and charges of bias against the all-LDS council and, in particular, individual members closely affiliated with the Church. These charges carry special weight in Salt Lake City because of the perception of the undue influence of the LDS Church on municipal affairs.

39. Salt Lake City Attorney, Ed Rutan, issued an opinion concluding that the City Council did "not have unilateral authority to close the easement to public access." Disagreeing with the conclusion reached by an attorney John Martinez previously retained by the Council, Rutan concluded that the Easement had been created by the special warranty deed (i.e., the Main Street sale contract) and not the City Council ordinance closing the street. Rutan explained that while the Council could amend the ordinance, it could not amend the deed and therefore could not eliminate the Easement. Following the release of the City Attorney's opinion, the Mayor issued a statement reiterating his commitment to preserving the Easement.

40. In widely published reports, Mayor Anderson often repeated his allegations of bias and defended his position as the more "objective voice in the dispute because the seven-member, all-LDS City Council has vast conflicts of interests." The Mayor also emphasized throughout this dispute that the majority of residents believe the City—where most residents are non-Mormon—should keep the Easement. The Mayor explained that "[i]t would be unbelievably divisive for anyone to [give up the Easement]," and that he "would be shocked if anybody seeking this office would contend that the City should back away from the previous agreement

that was previously entered into which guaranteed access.” In a subsequent address before the City Council, the Mayor chastised the Council for taking the “extraordinary measures” to aid the Church. The Mayor stated that it was “very clear to this community” that the Council would not have taken such steps to deprive the community of the right of access to the Plaza if it was owned by someone other than the LDS Church.

41. The Mayor’s allegations of undue influence by the LDS Church and bias by the City Council have special meaning in Salt Lake City because of the perception that the LDS Church controls the process of government. Immediately following the second Main Street Plaza transaction, a separate controversy arose involving similar allegations of bias. The dispute involved the re-development of Main Street south of the Plaza. Much of this property is owned by the LDS Church including the property currently occupied by Nordstrom’s department store. When the City Council unexpectedly voted to deny a proposed zoning change to allow Nordstrom’s to move to another downtown location supported by the Mayor and recommended by three independent consulting organizations hired by the City Council itself, but opposed by the Church, the Mayor repeated the charges of bias and undue influence exerted by the LDS Church. These comments reinforced the public’s perception about the Church’s undue influence.

42. The Mayor also objected to the LDS Church public relations campaign, which he described as bringing unfair “pressure to bear” on the all-LDS Council. Again, in widely published reports, including an article in the *The New York Times*, the Mayor rebuked the LDS Church for the rancor and mistrust the Plaza controversy was creating along religious lines. Mayor Anderson was quoted as stating that “[t]he impact on the City has been horrendous,” and blamed the LDS Church for the controversy: “My job is to do the right thing. To ask me to

convey that easement from the City to the LDS Church would be a huge betrayal to the people in this community.”

43. In response to the brochures widely distributed across Salt Lake and Davis counties by the Church, which characterized the Plaza as “the New Church Plaza,” the Mayor stated to the *Deseret News* that “it was the first time I have ever seen this plaza referred to as anything but the Main Street Plaza.” Mayor Anderson expressed his concern that the new name will alienate non-Mormons who might not want to associate with a “church” plaza, and noted that by including the word “Main Street” in the plaza name, the Church would have fostered a sense of community and helped heal existing rifts between Mormons and non-Mormons: “The Main Street Plaza (name) signifies a community asset that is inclusive. This [new name] signifies just the opposite.” The Mayor also criticized the effort on the part of the LDS Church to characterize the Plaza as an “ecclesiastical park.” The Mayor noted that throughout the public process, LDS leaders never referred to the Plaza as a religious park, but instead called it a “pedestrian” park that would “enhance the urban fabric of downtown.” In public statements reported in the *Deseret News*, the Mayor insisted that there would have been a public uproar if the Plaza would have been dubbed an ecclesiastical park prior to the City’s sale.

44. Despite the LDS Church’s re-characterization of the Plaza and its ongoing campaign to pressure the Mayor into abandoning his proposal, Mayor Anderson remained adamant in his commitment to preserve the Easement on behalf of the public. The Mayor insisted in a reported statement that “[i]t’s completely unprincipled to think it’s right to give away the public right of access,” especially given the fact that “the City would not have sold the property had it not been for the reservation of the easement.” He is also quoted as stating that

“for the City to walk away so casually from promises made. . . just for expediency’s sake, not only violates the law but is unethical. . . and [] creates a kind of cynicism [among the public].”

45. On November 26, 2002, the *Salt Lake Tribune* reported that the LDS Church offered to purchase the Easement from the City outright provided that the Church could control activities and speech on the Plaza. At the time, the City faced a well-publicized budget deficit. The amount offered was not revealed, but the Mayor stood firm, stating that he would not sell the City’s Easement for any price, according to a published report that appeared in the *Deseret News* following the Church’s proposal. The Mayor was quoted as stating that “[t]his used to be a block of our Main Street and the people of this city were promised that there would be a perpetual right of access to the public guaranteed by an easement held by the City. Nobody has any business violating that written agreement.”

46. On November 26, 2002, the Mayor released an open letter addressing the Main Street controversy that was published by the *Deseret News*. In his own words, Mayor Anderson makes the clearest case for not surrendering the easement:

That easement was crucial to the city at the time of the initial deal (emphasis added). The Court of Appeals noted as follows: "While the City wanted to close the street to automobile traffic, it simultaneously wanted to preserve and indeed encourage pedestrian traffic. The easement through the plaza was specifically retained in order to preserve and enhance the pedestrian grid in the downtown. . . . [T]he easement was a necessary means of accomplishing these public purposes. . . . [T]he pedestrian easement was central to these goals. . . . [T]he City has contended throughout this litigation that the City would not have agreed to the sale “but for” the easement.

Now that the Court of Appeals has ruled that the restrictions are unconstitutional, many people seem eager — even demanding (some of them very rudely) — that I violate the terms of the written agreement and betray the promises that were made to this entire community about the "crucial" public pedestrian easement. They call upon me to convey the easement to The Church of Jesus Christ, contrary to the written agreement and the public promises. Some who have made those demands have done so with righteous indignation that I would abide by the written agreement that was negotiated at length and drafted with the help of

several lawyers representing The Church of Jesus Christ and the city. *Ironically, I am being criticized by officials of The Church of Jesus Christ and Deedee Corradini for refusing to significantly alter a contract negotiated, drafted and signed by them. . . .*

If we are going to live up to our word — if we are going to abide by our promises — if we are going to comply with our written commitments — then we must let the written agreement signed on behalf of The Church of Jesus Christ and the city control the outcome of the Main Street Plaza situation. The parties agreed what would occur if a court deemed the restrictions to be unconstitutional. *To change that written agreement, and to betray the promises to our community about the "crucial" pedestrian easement, would be wrong.* If the City Council were to find a way to break those promises and destroy the public's legal right of access, those who oppose the conveyance of the easement would be well entitled to ask if agreements — if promises — mean anything anymore. *And they would be entitled to ask just why some members of the City Council went to such great lengths to undermine the public interest when the religious organization to which they belong is the party insisting that the written agreement be significantly altered* (emphasis added). For a principled outcome, we must apply the controlling ethical principles consistently, regardless of who the parties to the transaction are.

. . .

47. On December 6, 2002, the Mayor released his proposal for regulating speech on the Plaza. The plan adopted by the Mayor narrowly defined the easement and contained detailed regulations more extensive than those governing other public streets and sidewalks. The proposal gave the Church almost all of what it sought by abandoning the City's existing legal claim to guaranteed public access to and across the entire Plaza, by limiting that claim to a narrow strip on the East side of the Plaza (farthest from the LDS Church's temple) and by confining demonstrations to two designated areas at the North and South ends of that narrow strip. Leafleting would be permitted along the narrow strip under the Mayor's proposal.

48. The Mayor's proposal, however, was dead on arrival. Attorneys for the Church delivered a letter to the Mayor and members of the City Council the very same day rejecting the Mayor's plan and reiterating the Church's demand that the City surrender the Easement. "This community needs your help," Presiding Bishop H. David Burton wrote. "We respectfully submit

that there is a way to resolve this perplexing problem: the easement must be extinguished.” The receipt of the letter represented a turning point in the course of events for which the Mayor is singularly responsible. From that point forward, the Mayor gave up the fight to retain the Easement even though he fully understood that relinquishing it would betray the public interest.

C. The Mayor’s Decision to Abandon the City’s Right to Enforce the Terms of the Original Warranty Deed and to Relinquish the Easement.

49. On December 16, 2002, Mayor Anderson agreed to Bishop Burton’s demand that the City relinquish the Easement. This agreement was reached just three days after the Mayor reiterated his promise to not relinquish the Easement and after the release of an advisory opinion issued by the City Attorney concluding that the City Council had no authority to control the resolution of their dispute. The agreement was reached over the course of a weekend, completely out of the public view and under extremely unusual circumstances that strongly indicates that the agreement did not result from an arm’s-length negotiation. Mayor Anderson announced a plan that would extinguish the right of way and free speech rights in exchange for 2.17 acres of LDS Church-owned land on the City’s West Side. The Alliance for Unity, an independent group officially unaffiliated with the Church, simultaneously agreed to help raise \$5 million from private sources to help construct a community center on the property. One of the Alliance’s members with close ties to the Church, James Sorenson, pledged \$1 million towards this goal. The Church also agreed to contribute an unspecified amount to the \$5 million goal and to pay half of any attorneys’ fees sought by plaintiffs in *Main Street I*. The proposal, which would require City Council approval, gave the Church the absolute right to reinstate speech and behavior restrictions on the Plaza.

50. The final agreement approved many months later required that the LDS Church maintain the Plaza as a landscaped area, and prohibited the placement of any structures or fences

on the property. Just as with the original Warranty Deed, the City also reserved utility easements, access for emergency and police vehicles, and a view corridor provision that restricted the erection of buildings on the Plaza. Finally, the Right of Reverter contained in the original deed was replaced with a Right of Re-Entry as the mechanism for enforcing the use restrictions on the property. These restrictions, when viewed in combination, are inconsistent with full private ownership of property typically held in fee simple absolute. Moreover, as part of the deal announced by the Mayor, the LDS Church gave repeated assurances that public access would not be interfered with—subject only to the Church’s resurrected right to exclude protestors which the Church had seen granted under the terms of the original sale. The right of access promised by the LDS Church was a key consideration for the Mayor. The assurances given by the Church that the public would continue to have access were repeated many times through out of these negotiations, until and including including, the date on which the final transaction closed.

51. The circumstances under which the agreement was reached are yet to be fully disclosed, but the transaction did not result from an arm’s-length negotiation. It resulted from undue influence exerted by the LDS Church and was made in the context of claims of bias, betrayal, and conduct by the Church, which was alleged by the Mayor himself, to be unethical, unprincipled, divisive and unconstitutional. The Mayor also understood that his decision would be perceived by the public as pandering to the LDS Church and would reinforce the non-LDS community’s distrust of and cynicism about the influence of the LDS Church on the affairs of government. The agreement was reached in secret and involved the exchange of money brought to the table by wealthy and prominent members of the LDS Church. Neither the harm to the public attributable to the release of the Easement nor the value of the City’s property interest

were fairly stated. Both the value of the Easement and the harm to the public were intentionally understated. The agreement negotiated by the Mayor was presented to the public without any attempt to balance the competing public interests at stake.

52. Even the terms of the transaction were drafted with the Church's interests (not the public's) in mind in the event of future litigation. The agreement contains various "poison pill" provisions that run exclusively to the benefit of the LDS Church and to the detriment of the City. There was no reason to include these provisions. Similarly, there was no reason the parties could not have sought a declaration in state court concerning the enforceability of the severability clause contained in the original Warranty Deed. The Mayor could have pursued a number of options to resolve the Plaza controversy, but chose the one most beneficial to the LDS Church. The agreement was reached even before the Supreme Court had ruled on the LDS Church's petition for *certiorari*.

53. By yielding to the demands of the LDS Church, the Mayor fueled the very sources of distrust, cynicism and religious divisiveness that he had previously acknowledged would result if he gave into the Church's demands. While the Mayor's decision was welcomed by the LDS community, it was greeted with disbelief by the non-LDS community. A substantial majority of non-LDS residents of the City attributed the Mayor's decision to the undue influence of the LDS Church.

54. After announcing the new proposal, the Mayor abandoned everything he had said previously said about the importance of the Plaza to the residents of Salt Lake City and, instead, worked tirelessly to win approval for the new proposal. The Mayor began a widely publicized media campaign, including press conferences, color brochures, and numerous presentations to neighborhood community councils, the Chamber of Commerce, the Downtown Alliance, and

various other groups, to create wide-scale public support for the deal. The brochure makes the case that the agreement was reached with the LDS Church to end the divisiveness that the controversy was causing in the City and to bring the needed resources to the west side community. No attempt is made to defend the time, place, and manner regulations originally proposed by the Mayor or to reconcile the new proposal with the Mayor's many previous statements rejecting the Church's demand that the City relinquish the Easement. In the brochure, the Mayor actually blames the ACLU for killing his time, place, and manner proposal, when in fact it was the LDS Church that rejected it on the very day it was announced.

55. The Mayor made numerous presentations to business groups with the single goal of gaining approval for his proposal. One of the studies conducted by the City was a traffic impact study which purports to downplay the need for such access by suggesting that the impact of the Plaza's closure would be negligible, ranging from "loss of a walking route option with no additional walking distance to loss of a walking route option and an additional walking distance of at most two blocks." This report directly contradicts the findings by the Court of Appeals, which described the dedicated public use of the property as an integral part of the downtown transportation grid and the cornerstone of the re-development of downtown. *Main Street I*, 308 F.3d at 1126. The report is also contradicted by the findings of the Salt Lake City Planning Commission, which voted 4 to 3 on April 9, 2003 to reject the Mayor's land swap proposal. Officials from the LDS Church actively participated in and assisted with this campaign. The City Council also held hearings and commissioned studies designed to buttress the Mayor's proposal. In view of the development plans for Main Street South, moreover, the traffic impact study's conclusion is both implausible and completely misleading.

56. Working in concert with LDS Church officials, the Mayor's office drafted a new document conveying the Pedestrian Easement to the Church, thus giving it "complete and absolute control over all activities and uses of the [Plaza]." The amended Deed drafted by the City and LDS Church attempted to simultaneously thwart litigation regarding the transaction by incorporating poison pill language, which provided that, in the event a court were to determine that the City's right of reentry created or otherwise established a basis for recognizing a First Amendment public forum, the right of reentry would be extinguished. Additionally, the Warranty Deed provides that should the right of reentry be terminated, the provision requiring the LDS Church to use and maintain the Plaza as a landscaped space and to maintain the view corridor and fencing restrictions, will no longer be enforceable. The Deed specifically provides the City will also lose its right to obtain equitable or other relief if the City's right to such relief is interpreted to create or establish the basis for a First Amendment forum. These highly unusual provisions in the new Deed, each of which is exceptionally beneficial to the LDS Church, attempted to ensure that the Church could maintain its ability to police First Amendment activity on the Plaza and to shield the Church from any possible threat of litigation.

57. On June 10, 2003, the all-LDS City Council voted 6 to 0 with one abstention to approve Mayor Anderson's "community center" proposal and surrender the public access easement to the LDS Church. Some Council members cited keeping the Plaza "sacred" as part of their motivation in voting for the Mayor's plan. Council member Jergensen stated that "[t]he sacred nature of this space, once it was developed, will never be consistent with time, place, and manner restrictions." Council member Lambert agreed that the plaza is "sacred" and that "we need to respect that." Under the terms of the Settlement Agreement that the Council approved, the closing could take place no earlier than thirty-five days and no later than sixty days from the

signing of the Agreement. On Monday, July 28, 2003, Mayor Anderson and Presiding Bishop Burton closed the deal when Mayor Anderson signed away the City's Easement that guaranteed public access and free speech on the Plaza, trading it for two acres of LDS Church land on which to build a community center. In closing the deal, the LDS Church regained the ability to prohibit First Amendment activity on Main Street Plaza. At the closing, however, Bishop Burton insisted that, even though the public no longer had any legal right to enter the Plaza, the Church had no plans to curtail public access.

58. The Plaza's objective attributes and primary function have not changed as a result of the City's decision to relinquish the Easement. The Plaza continues to look and operate as a public plaza and thoroughfare, just as it did before, and both the Church and the City have confirmed that this will remain the case. The Mayor acted with full knowledge that the Plaza would continue to function as before. The City has worked in concert with Church officials to preserve the essential attributes of a public forum without the attendant responsibility of implementing viewpoint neutral regulations. The Plaza continues to function as a main downtown traffic artery seamlessly incorporated into the City's transportation grid. Under these circumstances, the Plaza remains the quintessential public forum. The City cannot abdicate its responsibility to regulate speech on the Plaza in a content-neutral way by transferring title to the LDS Church any more than it could do so by delegating responsibility to the LDS Church under the terms of the original transaction.

59. As a result of the City's decision to relinquish the Easement, the LDS Church has assumed important governmental functions and therefore its suppression of speech on Main Street Plaza on the basis of viewpoint constitutes impermissible state action in violation of the First Amendment.

60. The City's actions were taken to give the LDS Church a premiere and exclusive platform to distribute its message and to stifle dissent. The City's actions in relinquishing the Easement are nothing more than a façade for viewpoint discrimination and transparent effort to circumvent the Court of Appeals' decision in *Main Street I*. The purported benefits to the City from the transaction are less than they appear, and were packaged and presented in a way to provide *post hac* cover for the real reason for relinquishing the Easement.

61. Plaintiffs allege that the City has impermissibly delegated power over Main Street – the most important street in the life of any city – to a religious entity. Because of Main Street's historic and symbolic importance as the center of civic life, the transfer of the Plaza to the LDS Church conflates the role of government and Church in a way that would lead a reasonable observer to believe that the Church occupies the position of power and influence over government in Salt Lake City. Additionally, the City's delegation of this power to the LDS Church constitutes an impermissible entanglement between church and state and an improper endorsement of a particular religious group.

62. The Mayor's decision to relinquish the Pedestrian Easement was not the result of an arms length negotiation. It resulted from undue influence exerted by the LDS Church. The agreement both contradicts and betrays the City's secular interests in the property, and can only be attributable to the pressure applied by the LDS Church and the Church's threats about "community divisiveness" if the Mayor did not accede to its demands. This dispute took place in a City and State with a long history of conflict between Mormons and non-Mormons, and where there is a strong perception that the LDS Church asserts undue influence on the processes of government. The City yielded to this pressure rather than defend the public's interest.

63. There is a widespread belief among non-Mormons that, while much public policy is made with the approval or acquiescence of the Church, virtually no public policy is made in the face of opposition by the Church, unless so ordered by the courts. Even then, as this case illustrates, the Church's opposition has resulted in extraordinary efforts on its part and by the City to circumvent, and in essence defy, a federal court decision. The Plaza controversy has merely reconfirmed the fears of the non-Mormon residents of Salt Lake City and has contributed to their sense of alienation and outsider status in their political community.

64. The Church deliberately and successfully leveraged its power and influence to reestablish control over Main Street Plaza. Statements by the Mayor indicate that the threat of community divisiveness by the LDS Church was the major consideration in his decision to capitulate to the Church's demands – even if it meant sacrificing the public interest in maintaining the City's Easement. The City's actions have created the perception among non-adherents that the LDS Church enjoys favored status in the administration of government affairs.

65. The so-called benefits to the City from this deal come down to the property and money that was put up by the LDS Church and by wealthy and influential members of the Church. The Mayor had already rejected earlier attempts to purchase the Easement because of the overriding public interests at stake. All the other purported benefits were also previously rejected by the Mayor because of those interests. The interests now being advanced by the City are a façade for viewpoint discrimination and improper religious purpose. They are merely window dressing, subterfuge, and a sham for the real and improper reasons that motivated the Mayor's decision in this case.

CLAIMS FOR RELIEF

COUNT I

(Freedom of Expression and Assembly under the First and Fourteenth Amendments of the United States Constitution)

1. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 65 of this Complaint as if set forth fully herein.

2. Defendants, through their actions as described above, have violated plaintiffs' rights under the First Amendment of the United States Constitution to assemble and express themselves in a public forum, as applied to the states through the Fourteenth Amendment.

COUNT II

(Improper Establishment of Religion under the First and Fourteenth Amendments to the United States Constitution and Article I Section 4 of the Utah Constitution)

1. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs 1 through 65 of this Complaint as if set forth fully herein.

2. Defendants, through their actions as described above, have violated the requirement that church and state remain separate under the Establishment Clause of the First Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I Section 4 of the Utah Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

- (1) an order and judgment declaring that the aforementioned restrictions on speech and assembly violate the First and Fourteenth Amendments to the United States Constitution— notwithstanding the terms set forth in the Deed or any other documents that purportedly restrict the public's rights in the property and plaintiffs' First Amendment right (including the *poison pill* provisions);

- (2) an order and judgment enjoining defendants from enforcing those restrictions— notwithstanding the terms set forth in the Deed or any other documents that purportedly restrict the public’s rights in the property and plaintiffs’ First Amendment rights (including the *poison pill* provisions);
- (3) an order and judgment declaring that the aforementioned actions violate the Establishment Clause of the First and Fourteenth Amendments to the United States Constitution, and Article I Section 4 of the Utah Constitution— notwithstanding the terms set forth in the Deed or any other documents that purportedly restrict the public’s rights in the property and plaintiffs’ First Amendment rights (including the *poison pill* provisions);
- (4) an order and judgment enjoining defendants from violating the Establishment Clause of the First and Fourteenth Amendments to the United States Constitution, and Article I Section 4 of the Utah Constitution— notwithstanding the terms set forth in the Deed or any other documents that purportedly restrict the public’s rights in the property and plaintiffs’ First Amendment rights (including the *poison pill* provisions);
- (5) award plaintiffs their reasonable attorneys’ fees and costs under 42 U.S.C. § 1988;
- (6) any other relief as this court in its discretion deems just and appropriate.

Respectfully submitted this 2nd day of December 2003

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