

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

STEVE JANKOWSKI and PETER
SCOTT,

Plaintiffs,

vs.

CITY OF DULUTH; JIM NILSSON,
individually and in his official
capacity as Police Officer for the City
of Duluth,

Defendants.

CIVIL ACTION NO. _____

VERIFIED COMPLAINT

Come now Plaintiffs Steve Jankowski and Peter Scott and aver the following:

INTRODUCTION

1. This is a civil rights action against the City of Duluth's policy and practice of eliminating religious views in a public park during the public Bentleyville Tour of Lights event.

2. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs Steve Jankowski and Peter Scott seek injunctive relief, declaratory relief, and nominal damages against Defendants City of Duluth and Sergeant Jim Nilsson, individually and in his official capacity as Police Officer for the City of Duluth.

3. This action is premised on the United States Constitution and concerns the deprivation of Plaintiffs' fundamental rights to free expression and due process.

4. Defendants' actions have deprived and will continue to deprive Plaintiffs of their fundamental rights as provided in the First and Fourteenth Amendments to the United States Constitution.

5. Each and every act of Defendants alleged herein was committed by Defendants named herein, and each and every act was committed under the color of state law and authority.

JURISDICTION AND VENUE

6. Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has jurisdiction over Plaintiffs' claims. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction over Plaintiffs' request for declaratory relief.

7. Pursuant to 28 U.S.C. § 1391(b), venue is proper in District of Minnesota, because all claims arise out of this district and Defendants reside in this district.

PLAINTIFFS

8. Plaintiff Steve Jankowski ("Jankowski") resides in Duluth, Minnesota.

9. Plaintiff Peter Scott ("Scott") resides in Hibbing, Minnesota.

DEFENDANTS

10. Defendant City of Duluth ("Duluth") is a municipal governmental authority. Duluth controls and is responsible for public parks in the city. Duluth also promulgates regulations for public parks in the city.

11. Defendant Sergeant Jim Nilsson ("Sergeant Nilsson") is a police officer with Duluth. In his official capacity, Sergeant Nilsson is charged with enforcing Duluth

regulations, including those regulations that maintain activities in public parks. Sergeant Nilsson is sued in his official and individual capacities.

STATEMENT OF FACTS

Desired Speech of Jankowski

12. Jankowski is an evangelical Christian who expresses his beliefs and convictions to others in public because of a religious duty to do so.

13. Jankowski works as a full time minister. He created and currently heads up a Christian ministry in Duluth. This ministry seeks to communicate Christian beliefs to others, especially to those in the Duluth area.

14. Jankowski seeks to express his beliefs at public events and on public ways and encourages other Christians to do likewise. Jankowski and those in his ministry express their religious beliefs through signs, literature, wearing clothing with messages, and oral speech. Often, Jankowski conducts these expressive activities as part of a small group of three to four people. Jankowski also expresses his beliefs in public by himself.

15. Jankowski focuses his message on Jesus Christ. He emphasizes the need for people to place their faith in Jesus for salvation.

16. Jankowski only wants to share his message. He does not ask for money or gifts. He does not ask anyone to join his ministry or any other organization.

17. Jankowski does not intend to harass anyone or encourage violence. He has no desire to force anyone to listen to him or force anyone to converse with him or force

anyone to accept his literature. If someone declines to engage with him, he does not pursue it any further.

18. Jankowski does not litter or encourage others to litter. He is always willing to step aside while engaging in expression and let others pass by. He never blocks people as they pass by. He does not create any type of congestion or disturbance while expressing his beliefs.

19. To convey his message, Jankowski desires to engage in expressive activity at Bayfront Festival Park in Duluth, Minnesota during the Bentleyville Tour of Lights event.

Desired Speech of Scott

20. Scott is a professing Christian who feels compelled to proclaim his faith and convictions to others publicly.

21. Scott participates in Jankowski's ministry. In that way, Scott joins in with like-minded people to express shared beliefs to others in public.

22. As a part of this ministry, Scott has frequently visited public places in Duluth and expressed his religious views in those areas. Sometimes, Scott has expressed his beliefs by himself and other times Scott has expressed his beliefs with a few other people. Scott likes to hand out literature, give oral presentations, display messages on clothing and on signs, and converse one-on-one with others.

23. Scott seeks to express a message about Jesus Christ. Scott's message emphasizes God's love for the world as demonstrated in God's decision to sacrifice his own son so the world could obtain salvation. In light of this sacrificial love, Scott encourages people to stop trusting in themselves and to place their faith in Jesus alone.

24. Scott does not seek monetary gain. He does not try to sell products or services or ask for money. He does not elicit signatures or membership to any organization. He only wants to share his views and hopes to facilitate dialogue about his faith.

25. Scott has no intent to physically touch or harass anyone, or encourage violence, or express himself in any way other than in a peaceful manner.

26. Scott is also careful not to block access to any building or hinder pedestrians as they walk by or create any type of congestion. Nor does Scott encourage littering.

27. Scott desires to share his message in Bayfront Festival Park during the annual Bentleyville Tour of Lights event that takes place there.

Bayfront Festival Park

28. Bayfront Festival Park is a public park in Duluth located at South 5th Ave W & RR St. The park is open and free for use by the general public.

29. The City of Duluth maintains a list of parks and green spaces in the city, available at http://www.duluthmn.gov/parks/pdf%20files/parks_listing_2009.pdf. Bayfront Festival Park is identified on this list. Bayfront Festival Park also has its own

webpage on the official Duluth's official website, available at http://www.duluthmn.gov/parks/bayfront_park.cfm.

30. Bayfront Festival Park covers approximately 10 acres and includes many outside, open accessible areas for the general public to walk, sit, and relax. The park contains a large stage (the Lois M. Paulucci Music Pavilion), a large playground (Playfront Park), an ice skating rink during colder months, paved walkways and pathways, public restrooms, benches, tables, and large paved areas that function as pedestrian malls.

31. There is a plaque located on the grounds explaining the history behind Bayfront Festival Park. According to this plaque, “[i]n the early 1970s, sisters Caroline and Julia Marshall (of the Marshall family that founded the Marshall-Wells wholesale hardware company) purchased and gave a unique trace of waterfront land to the City ‘for public use and enjoyment.’”

32. Because it contains many large open spaces, Bayfront Festival Park allows for various activities all year round, including picnicking, walking, jogging or running along the paved walking paths, kite flying, throwing the Frisbee, and wide variety of other leisure activities.

33. There is a fence that partially goes around Bayfront Festival Park with large openings and entryways purposefully left open in parts of the fence. The openings allow people to freely access Bayfront Festival Park at all times.

34. Jankowski has visited Bayfront Festival Park on various occasions for leisure activities and has seen many other people in the park there for the same purpose.

35. The open, accessible spaces in Bayfront Festival Park are uniquely suitable for expression and the exchange of ideas.

36. Like many other public parks in Duluth, Bayfront Festival Park is available for parties to conduct a “Special Event” in the park. To conduct a special event, private parties must apply for and obtain a permit. The permit application and rules are available at http://www.duluthmn.gov/parks/pdf%20files/2011_files/special_%20event%20application.pdf. As these regulations indicate, Bayfront Festival Park is a public park just like any other public park in Duluth. A “permit does not give ‘exclusive’ use of the park...the park will still be open to the public.”

Bentleyville Tour of Lights Event

37. One such special event located in Bayfront Festival Park is the Bentleyville Tour of Lights event (“Tour of Lights”). This is an annual event that has taken place in the park since 2009. Tour of Lights is organized by a private 501(c)(3) non-profit organization called Bentleyville Tour of Lights. The event is sponsored by several entities including the City of Duluth itself.

38. Tour of Lights is a holiday lights display that takes place in Bayfront Festival Park. The event purports to be the largest Christmas light show in the Midwest. For the event, light displays celebrating the holiday season are placed in the park, and people come and walk through the park to look at the displays. The displays include a

twelve-story tall steel Christmas tree with over 50,000 sparkling LED lights, a 500-foot lighted tunnel, manger scenes, and many other lighted displays. There is also a “Cookie House” where visitors obtain complimentary hot chocolate, coffee, and cookies as they stroll through the Park. There are also 15 fire pits for roasting marshmallows and a “Polar Popcorn Hut” where people get free popcorn. There is also an area where a man dressed as Santa Clause sits and takes pictures with people. There are other areas in the park that allow people to gather and congregate.

39. Typically, Tour of Lights occurs from Thanksgiving to Christmas. The 2011 Tour of Lights will occur from November 19 to December 26. The customary hours for Tour of Lights are 5 p.m. to 9 p.m. from Sunday to Thursday and 5 p.m. to 10 p.m. on Friday and Saturday.

40. At all times during Tour of Lights, Bayfront Festival Park is free and open to the public. There is no need for a ticket to enter into the Park, and no admission is charged for looking at the holiday light displays. Just like all other times, citizens are free to come into Bayfront Festival Park and engage in a wide variety of activities, including, but not limited to, activities connected to Tour of Lights. During the event, Bayfront Festival Park remains open to event and non-event pedestrian traffic.

41. During Tour of Lights, people engage in a wide variety of conduct in the event area. People mingle around the fire pits and converse. People congregate and remain stationary as they look at light displays and take pictures of the displays and eat food. People also talk on their cell phones. Some people walk through the park with baby

strollers. A few waltz through the park dressed in animal costumes and allow others to take pictures with them. Many individuals wear clothing with messages.

Censorship of Scott's Expression during 2010 Tour of Lights

42. On November 27, 2010, Scott and a friend (Michael Winandy) decided to go to Bayfront Festival Park to express their religious beliefs by distributing literature, making oral presentations, engaging in one-on-one conversations, and/or displaying religious messages on their clothing.

43. They chose this particular date because they knew Tour of Lights was taking place in Bayfront Festival Park at that time. Scott wanted to reach the audience that would be at the park for the event.

44. Scott did not want - nor did he attempt - to participate in the event or in any event activities in any way. He did not use a sound amplification device. Nor did he desire to disrupt the activities of the event in any other way. Scott only wanted to walk through and stand in Bayfront Festival Park while expressing his message -- a message distinct from any message presented by Tour of Lights and by its organizers.

45. Scott and Winandy arrived at Bayfront Festival Park at approximately 7:30 p.m. Upon arrival, they began expressing their religious beliefs to the attendees via literature and dialogue. Scott was also wearing a sweatshirt with religious messages. The front of this sweatshirt said: "Fear God. Hate Sin. Trust Jesus." And the back of this sweatshirt said: "The Blood of Jesus Washes Away Sins." Winandy wore a vest that said "Trust Jesus" on both the front and the back.

46. While engaging in this expression, Scott never blocked nor created any congestion nor harassed anyone nor created any type of disturbance. Scott and Winandy purposefully placed themselves outside the flow of pedestrian traffic.

47. At approximately 8:50 p.m., a Duluth police officer dressed in full police uniform walked by Scott. The officer held himself out as a police officer with full police authority. Scott engaged this officer (Officer Jim Nilsson) in a brief discussion about religious topics. When this conversation ended, Officer Nilsson walked away, but remained within earshot of Scott, while Scott continued to engage in his religious expression. During Scott's encounter with Officer Nilsson, Winandy was nearby also engaging in his expressive activities.

48. A few minutes after Scott's initial conversation with Officer Nilsson, Officer Nilsson approached Scott again and ordered him to stop all his expressive activities. Surprised, Scott asked why he had to stop his expression. Officer Nilsson responded that the park was not an appropriate place for it.

49. Scott told Officer Nilsson that he disagreed with that assessment. Scott believed he could rightfully engage in his expression in the area, but feared being arrested for violating Nilsson's order. Consequently, Scott stopped all his expression at that time. If not for the order from Officer Nilsson, Scott would have continued with his expression.

50. Scott informed Winandy about the incident, and they left to go to their car. As they were leaving, though, they saw Officer Nilsson leaving the area. Scott asked Officer Nilsson if he was leaving and Nilsson confirmed that he was.

51. Scott and Winandy firmly believed that they had a constitutional right to express their beliefs in the park. Knowing that Officer Nilsson left the park, and would not be present to arrest them, they proceeded with their expression in the park.

52. Scott and Winandy engaged in their expression from approximately 9:30 p.m. to 9:45 p.m. Once again, they expressed their religious beliefs through literature, expressive clothing, conversation, and oral presentation.

53. At approximately 9:45 p.m., a few representatives of Tour of Lights approached Scott and Winandy. These officials were dressed in official Tour of Lights event attire. One of these officials said to Scott: "Do you realize that freedom of religion is also freedom from religion and you're impinging on my rights?" In response, Scott tried to explain that the First Amendment protected his religious expression. Then, Scott began to share with these officials how Jesus loved them and died for them.

54. In response to Scott's message, one official threatened: "If you don't back down, we will help you meet him [Jesus] quicker." The same official then offered that he had read the Bible and the Koran himself and accused Scott of "imposing your religious beliefs on other people, which is a violation of the First Amendment because freedom of religion is also freedom from religion."

55. Scott attempted to explain the basis for free speech in the First Amendment, but the same official who spoke earlier interjected: "Well its my freedom of speech as well to tell you that you are imposing on other people's beliefs, they don't want to hear religious proselytizing, they don't want to hear religious crap."

56. One official grabbed the video camera that Winandy was holding. Scott and Winandy tried to reason with the officials and asked them to let go of the camera. But the officials refused, even after Scott threatened to call the police. Left with no other choice, Scott called 911 and asked for police protection from these angry officials. While Scott and Winandy waited for the police to arrive, the Bentleyville officials verbally harassed Scott and Winandy and made fun of their Christian beliefs.

57. A few minutes later, the police arrived at the park and called Scott on his cell phone. Scott went to meet the police at the entrance to Tour of Lights, while Winandy remained inside the park with the event officials and the camera.

58. Scott met Officer Thamm and led him to the area with Winandy and the event officials. Once there, Officer Thamm began to question the event officials and Scott and Winandy. At some point during the questioning, another police officer, Officer Sheen, arrived.

59. After they finished their questioning, Officers Thamm and Sheen asked for the video camera memory card containing the interactions between Scott, Winandy, and the event officials so that the officers could review the tape. Scott and Winandy then turned over the memory card. At this point, Tour of Lights had ended, and Scott and Winandy left the area.

60. Despite turning over the video evidence, Scott did not receive any type of assurance that they could return to the park during Tour of Lights and express their beliefs.

Confirmation of Duluth's First Amendment Ban

61. The day after the November 27 incident, Scott told Jankowski about his encounter with the police and event officials. Scott told Jankowski because he was acting on behalf of Jankowski's ministry while he was expressing his beliefs and because Jankowski was the owner of the memory card that Scott gave to the police. Scott also made Jankowski aware of the prohibition on expression in Bayfront Festival Park during Tour of Lights.

62. This news troubled Jankowski because Jankowski had intended to go to Bayfront Festival Park himself some point later and engage in his own religious expression during the 2010 Tour of Lights event. Jankowski had already gone to Bayfront Festival Park during the 2010 Tour of Lights event prior to the November 27 incident on two separate occasions. On both occasions, Jankowski was able to engage in his expression without incident. No one asked him to leave or ordered him to stop.

63. The day after talking to Scott, Jankowski received confirmation of the First Amendment ban in Bayfront Festival Park. On November 29, 2010, Jankowski received an email about this ban from M. Alison Lutterman, the Deputy City Attorney for Duluth. Ms. Lutterman had Jankowski's email address because they had communicated in the past about the activities of Jankowski's ministry elsewhere in Duluth.

64. In her November 29 email, Ms. Lutterman explained to Jankowski: "Office of the City Attorney has been advised that you have been within the grounds of

Bentleyville engaging in your educational activity. I have been asked to contact you regarding your activities.”

65. Ms. Lutterman contended in this email: “Bentleyville Tour of Lights, Inc., a private not for profit corporation, has a contract with the city that allows it exclusive rights to the use of the Bayfront area for its presentation of a holiday lighting display known as Bentleyville. These exclusive rights include the right to exclude persons. Bentleyville is not an area intended for the exercise of 1st Amendment activity. The management of Bentleyville have been advised of its right to exclude persons from the area within its contractual exclusive use. Please be advised that if Bentleyville personnel request that you leave and you refuse to go, your refusal constitutes a trespass which is a misdemeanor under Minnesota law and may subject you to arrest.”

66. After reading this email from an official legal representative of Duluth, Jankowski realized that Duluth officials and police officers would exclude and silence any speaker in Bayfront Festival Park whenever Bentleyville officials objected to the message. He knew that an objection to his expression resulted in a First Amendment ban. For this reason, Jankowski refrained from expressing his religious message via literature distribution, expressive clothing, sign display, and one-on-one conversation at Bayfront Festival Park during the balance of the 2010 Tour of Lights. If not for the First Amendment ban, Jankowski would have gone to Bayfront Festival Park and expressed his beliefs at some point during the 2010 Tour of Lights.

Duluth’s First Amendment Ban

67. Following the email from Ms. Lutterman, Jankowski obtained a copy of the agreement referenced by Ms. Lutterman in her email. This Agreement is entitled “City of Duluth – Bayfront Festival Park Bentleyville Tour of Lights Agreement 2010-2013.”

68. According to Article 2 of this agreement, “the CITY agrees to permit the PROMOTER the full utilization of the Bayfront Festival Park and Family Center...for the sole purpose of conducting a holiday lighting display with related concession activities.”

69. And, according to Article 4 of this agreement, “[t]he EVENT shall be open to the public each day between the hours of 5:00 p.m. and 9:00 p.m.” Likewise, Article 7 of this agreement states that “PROMOTER shall not charge an admission fee to the EVENT.”

70. The agreement also specifies various items that Duluth must provide for Tour of Lights. Some of these items include trash receptacles, recycling receptacles, cleaning services to the Bayfront Family Center, public restrooms, snow removal, city owned lights upon request, and assistance in marketing and fund-raising. In the agreement, Duluth also offers to provide a “Duluth Police department portable trailer surveillance system” for the event.

71. Pursuant to this agreement, Duluth agrees to provide a “City Staff Liaison” who will “work with all the organizations involved to communicate and coordinate their activities.” Duluth in this agreement also retains the right for unlimited access of all its officials and all law enforcement personnel to Bayfront Festival Park.

72. Contrary to Ms. Lutterman's assertion, the agreement did not provide for exclusive use, just full use. Nevertheless, Jankowski understood that City of Duluth was empowering the event organizer with the authority to reject certain speakers and messages.

73. Duluth enforces the decisions of Bentleyville officials to silence and exclude speakers from Bayfront Festival Park for any reason whatsoever, including content-based and viewpoint-based reasons, which effectuated a First Amendment ban on Jankowski's and Scott's expression.

Continued Confirmation of Duluth's First Amendment Ban

74. Jankowski and Scott found the situation intolerable because they want to return to future Tour of Lights events and express their religious beliefs.

75. In an effort to remedy this situation outside of litigation, Scott, through counsel, sent a letter on April 11, 2011 to Duluth's Mayor (Don Ness), Duluth's City Attorney (Gunnar Johnson), and Duluth's Deputy City Attorney (Ms. Lutterman).

76. This letter described the events that occurred on November 27, 2010 and explained why the treatment of Scott by City of Duluth officials violated the U. S. Constitution. This letter asked that Duluth allow Scott to engage in his desired expressive activities in Bayfront Festival Park during the upcoming Tour of Lights in 2011. This letter also requested that Duluth officials provide a timely written response to ensure the protection of First Amendment rights.

77. After requesting numerous extensions, Duluth finally responded to Scott's letter on June 20, 2011. This response did not allay Scott's constitutional concerns. The Duluth letter emphasized the agreement between the City and the organizer of Tour of Lights. Because of this agreement, so says Duluth, "the non-profit is not a state actor and it has the right to establish rules of conduct for Bentleyville. Consequently, Duluth lacks the legal authority to require the non-profit to allow Scott to engage in his desired activities." As this letter reveals, Duluth refused to provide assurance to Scott that city officials would refrain from censoring and excluding his expression at Bayfront Festival Park.

78. Upon receiving the letter from Duluth, Scott's counsel sent a follow-up letter to Duluth on July 7, 2011. In this follow-up letter, Scott's counsel emphasized that Scott was not asking Duluth to force any private entity to do anything. Rather, Scott was seeking "assurance that the City will not use its police officers to enforce the rules of the private organization." Like the first letter sent to Duluth, this follow-up letter also requested assurance from Duluth that it would refrain from excluding Scott from Bayfront Festival Park.

79. Despite this plea for assurance, to date, no Duluth official has responded to this follow-up letter. Jankowski and Scott are left without any assurance that their expression will not be silenced, just as it was silenced during the 2010 Tour of Lights.

Lasting Impact of First Amendment Ban on Jankowski and Scott

80. As demonstrated by Defendants' actions, emails, and letters, Duluth has adopted and continues to enforce a First Amendment ban against Jankowski and Scott and any other speaker that Tour of Lights officials happen to find objectionable.

81. This First Amendment ban serves to chill and deter Jankowski's and Scott's religious expression.

82. Under the First Amendment ban, Duluth agrees to exclude and silence any speaker from Bayfront Festival Park anytime a Tour of Lights official requests a speaker be silenced, and specifically, the religious speech of Jankowski and Scott. Tour of Lights officials do in fact object to their religious expression.

83. Jankowski and Scott can find no standards that prevent Duluth officials from silencing speakers in Bayfront Festival Park for content and viewpoint-based reasons. Duluth places no limitations on how Tour of Lights officials can exclude speakers. Duluth will act upon any request of Tour of Lights officials to exclude any speaker, even if the request to exclude a speaker is based on disagreement with the content or viewpoint of a speaker's message. Jankowski and Scott are fearful that Tour of Lights officials will persist in excluding them because of the content and viewpoint of their message and that Duluth officials will act on this request and forcibly exclude Jankowski and Scott.

84. Duluth officials have already applied the First Amendment ban and excluded Jankowski and Scott from Bayfront Festival Park because Tour of Lights officials objected to the content of Jankowski and Scott's message. Jankowski and Scott

are afraid that this content-based regulation will continue and that they will be excluded from the park in the future because of the religious content and viewpoint of their message.

85. The First Amendment ban acts as a total ban on all expression of certain speakers in Bayfront Festival Park. Pursuant to this policy, Duluth silences any and all expression Tour of Lights officials find objectionable. Speakers like Jankowski and Scott are precluded from engaging in any form of expression --- whether it be literature distribution, displaying messages on signs or on clothing, speaking, or one-on-one conversation and whether it be as part of small group or alone --- in Bayfront Festival Park during Tour of Lights.

86. While the First Amendment ban completely bans all of Jankowski's and Scott's religious expression, this on-going policy permits other expressive and non-expressive activities to freely take place in Bayfront Festival Park during Tour of Lights.

87. If not for the First Amendment ban, and actions of Defendants in enforcing this policy, and the fear of arrest, Jankowski and Scott would return to Bayfront Festival Park during the 2011 Tour of Lights event as well as future Tour of Lights events to share their message via displaying signs, displaying messages on clothing, literature distribution, speaking, and conversation.

88. The fear of arrest severely limits Jankowski's and Scott's constitutionally-protected expression in Bayfront Festival Park.

89. The impact of chilling and deterring Jankowski and Scott from exercising their constitutional rights in Bayfront Festival Park constitutes irreparable harm to Jankowski and Scott.

90. Jankowski and Scott do not have an adequate remedy at law for the loss of their constitutional rights.

FIRST CAUSE OF ACTION

Violation of Free Speech Clause

91. Jankowski's and Scott's religious expression constitute protected speech under the First Amendment.

92. Defendants' policies and practices, and enforcement thereof, including, but not limited to the First Amendment ban in Bayfront Festival Park:

- a. are vague and overbroad;
- b. single out religious speech for discriminatory treatment;
- c. discriminate against speech because of its content;
- d. discriminate against speech on the basis of the speaker's viewpoint;
- e. restrain constitutionally-protected speech in advance of its expression, without appropriate guidelines or standards to guide the discretion of officials charged with enforcing the policy;
- f. chill the free speech and free exercise of religion of Jankowski and Scott and of other third party citizens;
- g. allow the exercise of unbridled discretion;

- h. create a content-based heckler's veto that allow Jankowski and Scott to be silenced due to hostile audiences;
- i. lack narrow tailoring, fail to achieve any legitimate government purpose, and fail to leave open alternative avenues for expression; and
- j. are unreasonable.

93. Defendants have no compelling or legitimate reason that can justify their censorship of the religious viewpoints sought to be expressed by Jankowski and Scott.

94. Defendants' policies and practices, and the enforcement thereof, thus violate the Free Speech Clause of the First Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment.

95. WHEREFORE, Jankowski and Scott respectfully pray the Court grant the equitable and legal relief set forth in the prayer for relief.

SECOND CAUSE OF ACTION

Violation of Due Process Clause

96. Defendants' policies, including but not limited to the First Amendment ban, are vague and lack sufficient objective standards to curtail the discretion of officials. This allows Defendants ample opportunity to enforce the policies in an *ad hoc*, arbitrary, and discriminatory manner.

97. Defendants have no compelling or legitimate reason that can justify their vague policies.

98. The policies, and Defendants' enforcement thereof, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Jankowski and Scott respectfully pray the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Jankowski and Scott respectfully pray for relief in that this Court:

- A. Assume jurisdiction over this action;
- B. Enter a judgment and decree declaring that the First Amendment ban, and Defendants' enforcement thereof, are unconstitutional on their face and as applied to Jankowski's and Scott's desired speech (displaying signs, literature distribution, public speech, messages on clothing, one-on-one dialogue) because it violates Jankowski's and Scott's rights and the rights of third parties not before the Court, as guaranteed under the First and Fourteenth Amendments to the United States Constitution;
- C. Enter a preliminary and permanent injunction enjoining defendants, their agents, officials, servants, employees, and all persons in active concert or participation with them, or any of them, from applying the First Amendment ban or any other policy or practice, so as to restrict constitutionally-protected speech of speakers, including Jankowski and Scott, in Bayfront Festival Park during Bentleyville Tour of Lights;

D. Adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;

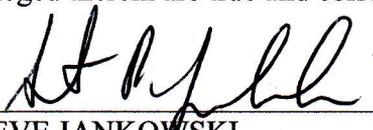
E. That this Court award Plaintiffs nominal damages arising from the acts of the Defendants as an important vindication of the constitutional rights;

F. That this Court award Plaintiffs their costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law; and

G. Grant such other and further relief as appears to this Court to be equitable and just.

VERIFICATION OF COMPLAINT

I, Steve Jankowski, a citizen of the United States and a resident of Duluth, Minnesota, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.



STEVE JANKOWSKI

VERIFICATION OF COMPLAINT

I, Peter Scott, a citizen of the United States and a resident of Hibbing, Minnesota, hereby declare that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged therein are true and correct.



PETER SCOTT

Respectfully submitted,

<p>Nathan W. Kellum NATHAN W. KELLUM* TN BAR #13482; MS BAR # 8813 JONATHAN SCRUGGS* TN Bar # 025679 Alliance Defense Fund 699 Oakleaf Office Lane, Suite 107 Memphis, TN 38117 (901) 684-5485 telephone (901) 684-5499 – Fax</p> <p>Attorneys for Plaintiffs</p> <p>*Motion for Admission <i>pro hac vice</i> filed concurrently</p>	<p><u>s/ Mark W. Peterson</u> MARK W. PETERSON #86125 MARK W. PETERSON LAW OFFICE 5200 Willson Road, Suite 150 Minneapolis, MN 55424 phone: (612) 760 8980 fax: (952) 836 2785</p> <p>Attorney for Plaintiffs</p>
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