

Janelle P. Eurick (USB #8801)
American Civil Liberties Union of Utah
Foundation, Inc.
355 North 300 West, Suite 1
Salt Lake City, Utah 84103
(801) 521-9862 ext. 103

Mark J. Lopez
American Civil Liberties Union Foundation, Inc.
125 Broad Street
New York, New York 10004

**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,
CRAIG S. AXFORD, and LEE J.
SIEGEL,

Plaintiffs,

Vs.

SALT LAKE CITY CORPORATION, a
Municipal corporation; and ROSS C.
"ROCKY" ANDERSON, Mayor of Salt
Lake City, in his official capacity,

Defendants

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. _____

Judge _____

INTRODUCTION

1. This action arises from the extraordinary efforts Salt Lake City has undertaken to avoid the holding in *First Unitarian Church of Salt Lake City v. Salt Lake City Corporation*, 308 F.3d 1114 (2002) (*Main Street I*), and to protect and advance the interests of the Church of Jesus Christ of Latter-Day Saints (LDS 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. 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 and thereby maintained a public right of way through the property. In *Main Street I*, the Tenth Circuit held that the plaza was unquestionably a public forum despite the city’s characterization of the property as private. The court stated: “As society becomes more insular in character, it becomes essential to protect public places where traditional modes of speech and forms of expression can take place.’... We think this is particularly true with respect to downtown public spaces conducive to expressive activities.” To that end, the court clearly instructed that “the City may not exchange the public’s constitutional rights even for other public benefits such as the revenue from the sale.”

2. In utter disregard of the Tenth Circuit’s clear holding and instruction, Salt Lake City has now tried once again to do just that: 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 in the demands of the LDS Church that the City abandon the easement and create an exclusive and uniquely powerful platform for the LDS 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 the manner. Just as with its first attempt, the City's effort is unavailing. While the City has relinquished its easement, it has done so under circumstances ensuring that the plaza will continue to function as an unobstructed pedestrian thoroughfare seamlessly incorporated into the downtown transportation grid and indistinguishable in form and function from its character as a public forum established in *Main Street I*. The courts have long held that regardless of where title to the property rests, streets and sidewalks "have immemorially been held in trust for the use of the public and, time out of mind, have been used for the purposes of assembly, communicating thoughts between citizens, and discussing public questions." Whether measured by the language of the new conveyance instrument itself or by other factors, the plaza remains the quintessential public forum and city officials remain constrained by the controlling First Amendment principles that inform the court's decision in *Main Street I*.

3. The remarkable sequence of events that followed that decision cannot mask the fact that the City's rewriting of the original deal is nothing more than a cynical effort to sidestep the Court of Appeals decision and to allow the LDS Church to discriminate against speakers with critical or opposing viewpoints. Church and City officials have acted in concert to ensure that the Plaza continues to function as before while at the same time giving effect to the speech restrictions that were contained in the original warranty deed. Neither the First Amendment nor respect for the judicial process can be so easily jettisoned. The parties' suggested labels do not control the analysis or the outcome of the public forum question. Courts uniformly look to the objective attributes of the property and, measured by this standard, Main Street has not changed and continues to function as before. The First Amendment principles under consideration in *Main Street I* remain fully applicable here.

4. The City's actions described above also violate settled First Amendment principles requiring the separation of church and state. To any reasonable observer knowledgeable of the history and context of the Plaza controversy, it is evident that the City relinquished the public's right of way in order to protect the LDS Church's avowed religious use of the property, and to prevent protestors from intruding upon this "sacred" space. This is a sectarian, not a secular, government purpose. The interests at stake in the dispute over the Plaza divide along very clearly demarked religious lines. The Church has consecrated the Plaza as sacred even though the City has always maintained that the Plaza served important governmental, – not sectarian interests. The government interests in the Plaza are a matter of public record and provided the foundation for the Court of Appeals decision in *Main Street I*. When the City decided to relinquish the easement, it did so to satisfy the demands of the LDS Church, not to fulfill its obligation to maintain the Plaza as a pedestrian thoroughfare. Initially, the Mayor of Salt Lake City vigorously defended the Court of Appeals decision and the governmental interests at stake. After months of trying to battle the LDS Church, its massive public relations operation and the City Council members who from the beginning set about to do the Church's rather than the public's bidding, the Mayor did a sudden about-face and capitulated to the Church's demands that the City surrender the right of way through the property.

5. The Mayor's decision was reached under extremely unusual circumstances and inexplicably reversed the position the City had previously advanced both before and after *Main Street I* about the importance of the governmental interests in the Plaza. The City's actions are directly attributable to what the Mayor of Salt Lake City himself describes as the "extraordinary pressure" brought by the LDS Church to rewrite the terms of the original warranty deed to create a purely religious enclave and to deprive the public of the right of way through the property. As

a result, the City has allowed the Church to create an “ecclesiastical” park at the crossroads of downtown under circumstances that were never contemplated by the enabling legislation originally approving the conveyance of the property to the Church. The City has also impermissibly delegated to the LDS Church the authority to control expression and other First Amendment activities on the Plaza. Because the Plaza remains a public forum, that authority cannot be vested in Church officials. The Court of Appeals settled this issue in *Main Street I* when it held that it was the responsibility of City officials to promulgate reasonable time, place, and manner regulations on the Plaza. The bottom line is that City residents and visitors alike will continue to pass through the Plaza and be “funneled” to the City’s central commercial and shopping district, but as they do so they will be subjected to the LDS Church’s point of view without the ability to respond with views of their own, at the risk of being jailed for “trespass.”

6. Not only were the City’s actions motivated by primarily religious considerations, but they also have the effect of promoting and endorsing the Mormon religion by conveying a message that the City favors one religion over another. The great lengths the City went to in this case to protect the LDS Church from unwanted and critical speech on the Plaza are obvious to anyone familiar with the history and context of this controversy. The plaintiffs in *Main Street I*, and other members of the community who agree with principles affirmed in that decision, have watched in disbelief as the City has given away their hard fought victory. By its actions, the City has sent a message to non-Mormons that they are outsiders, and not full members of their political community. This has contributed to the divisiveness and mistrust between Mormons and non-Mormons that the Establishment Clause was designed to prevent. In Utah, these charges carry special weight because of the widely held perception that the dominant position of the LDS Church allows it to exert undue influence over the process of government. The creation

of what the LDS Church now openly describes as an “ecclesiastical park” in the heart of downtown Salt Lake City would lead a reasonable observer to believe that the City has endorsed not only religion, but a particular religion, especially given the special history and context of this controversy.

7. The relief granted by the Court in *Main Street I* has been swept away by governmental actions that are both improper and that were taken for purposes of advancing the Church’s interests. The purported benefits to the City are irrelevant, because the decision to acquiesce in the Church’s demands for absolute editorial control of the pedestrian plaza was taken in response to the Church’s steadfast opposition to any government regulation of the plaza, and before those benefits were even discussed. Once the LDS Church made it clear that it would not work with the City to develop reasonable time, place, and manner regulations, the Mayor decided that the only issue was: “what can the City get in exchange for the easement?” The Mayor reached this decision even though he recognized that relinquishing the easement did not serve the public interest, and that there were many other options available to the City. By any standard, the City’s actions violate both the First Amendment’s guarantee of free speech and the Establishment Clause requirement that Church and State remain separate.

JURISDICTION AND VENUE

8. 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 of 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.

9. Venue for this action properly lies in the Central Division of this Judicial District pursuant to 28 U.S.C. § 1391 (b) because defendants reside 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

10. 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. Gorden to leave the plaza, and explained that he would be cited for trespass if he

refused. Mr. Gorden proceeded to ask the officer if he would like some of his religious literature, the officer then cited Mr. Gorden for trespass. Because Mr. Gorden's family accompanied him at the time, Mr. Gordon left the plaza and did not pursue the issue at that time. Mr. Gordon returned to the plaza the next day to distribute literature. LDS security guards again asked him to leave the plaza and called a Salt Lake City police officer. Subsequently, Mr. Gorden was arrested and taken to jail after he refused to leave the plaza. The decision of Salt Lake City to abandon the public easement on the Main Street Plaza has placed Mr. Gorden 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. Gorden 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.

11. Plaintiff First Unitarian Church of Salt Lake City (the "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 Defendants' conduct in providing the LDS Church an exclusive, preferred platform on Main Street. 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 the Main Street Plaza unless the Court invalidates Defendants' unconstitutional delegation of that discretionary function. Finally, members of the Unitarian Church have expressed their strong opposition to the governmental endorsement of one religion inherent in the restrictions Defendants have imposed on Main Street, 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 the 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 on 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.

12. 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 the 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 the Main Street Plaza and on equal footing with the LDS Church, but cannot do so because of the City's conduct in providing the LDS Church an exclusive, preferred platform on Main Street by abandoning the public easement on the Main Street Plaza.

13. 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 criticize the LDS Church about its policies and support of political candidates who favor nuclear proliferation. Members of the Shundahai Network allege that Salt Lake City's abandonment of the public easement across the 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 the 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 the 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 the 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 Main Street Plaza. These members also reasonably fear that they will be prohibited from enjoying access to and use of Main Street Plaza.

14. Plaintiff Utah National Organization for Women ("Utah NOW") is a feminist organization dedicated to securing and preserving equal rights for women. In the 1980's 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 vacate the public easement on the plaza and give it to the LDS Church was done 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 public easement on the Main Street 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 the Utah NOW that have regularly traveled on the 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 so as not to be confronted with unwelcome governmentally sanctioned religious messages.

15. Plaintiff Craig S. Axford is an individual taxpayer and resident of Salt Lake City and a member of the Unitarian Church. Axford has stated his intention to run for Congress, and hopes to mobilize political support around the Main Street Plaza controversy. Axford testified at public hearings in opposition to the proposed sale and objects to the governmental endorsement of religion inherent in the sale and the restrictions to such an extent that although he has traveled on Main Street in the past and would otherwise continue to visit and enjoy the pedestrian plaza on Main Street, he will take pains to avoid visiting the Main Street Plaza so as not to be confronted with unwelcome governmentally-endorsed religious messages. He also believes 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.

16. 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 only to LDS Church messages which, because of Salt Lake City's abandonment of the public easement, effectively will be sanctioned and endorsed by the City. Mr. Siegel will take pains to avoid visiting the Main Street Plaza as he has no desire to be confronted with and hear unwelcome governmentally-endorsed religious messages.

17. Defendant Salt Lake City Corporation (the "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.

18. Defendant Ross C. "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.

FACTUAL ALLEGATIONS

A. The Background and Terms of the Original Sale of Main Street to the LDS Church.

19. The relevant facts set forth in this background section are not in dispute. They are set forth in detail the reported Court of Appeals decision in this case (*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 Church of Jesus Christ of Latter-Day Saints (“LDS Church”). The sale was formally to the Corporation of the Presiding Bishop, a corporate entity wholly owned by the LDS Church. We refer to both entities as “LDS Church” or “Church.”

20. 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 (“Main Street Plaza” or “Plaza”). Directly to the north along Main Street lies a residential neighborhood rising along a hill on the north end of town. 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.

21. The LDS Church owns all 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.

22. In 1995, the Salt Lake City Corporation (“City”) sold the subsurface rights to this portion of Main Street to the LDS Church, which the Church eventually developed into an underground parking garage. The agreement to that sale also gave the LDS Church a right of first refusal on the surface property, should the City ever decide to sell it. In 1996, the City considered closing this portion of Main Street to automobile traffic but leaving it open to pedestrians, and also considered selling the land to the LDS Church for this purpose. That proposal was eventually dropped.

23. In 1998, the City again explored the possibility of closing this 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.

24. 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. In the process leading to approval, the Planning Commission recommended that the City Council approve the sale contingent on several conditions that reflected the Commission’s concern with ensuring public access and allowing public expression on the pedestrian plaza. The suggestions included a recommendation that the City retain a perpetual pedestrian easement “planned and improved so as to *maintain, encourage, and invite public use*” and “[t]hat there be no restrictions on the use of this space that are more restrictive than is currently permitted at the public park.”

25. The Ordinance the City Council passed approving the street closure and sale was similarly contingent on several conditions, but retained only some of the Planning Commission's recommendations. The first condition, which did reflect the Planning Commission's recommendation, was that the City retain a perpetual pedestrian easement for public use, "planned and improved so as to maintain, encourage, and invite public use." Indeed, even going beyond the Planning Commission's recommendations in an effort to further secure perpetual public use and access, during its meeting to adopt the Ordinance, the City Council requested that the City retain a Right of Reverter to the property specifically to ensure that the LDS Church would keep the Plaza open for public use as promised. However, the City Council omitted from the Ordinance the condition that the plaza be regulated no more strictly than a public park.

26. 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. The easement guaranteed a public right of way through the property but was written in a way that allowed the LDS Church to control all other conduct on the plaza—including First Amendment activity.

27. 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 Reservation of Easement contained a Right of Reverter providing 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.

28. At its own expense, the LDS Church reconstructed the former street and sidewalks, making the area an attractive pedestrian plaza. There are paved walking areas accented by planters, benches, and waterfalls, a large reflecting pool, and changes in grade. The LDS Church uses the Plaza for religiously oriented exhibits, dissemination of information, and special events, as well as for an additional entrance to the Temple Square.

29. While the LDS Church now refers to the Plaza as an ecclesiastical park, prior to the sale when asked how it would further the public interest, the Church variously described the proposed Main Street Plaza as “a pedestrian-friendly area,” “a funnel to the Crossroads and ZCMI Center shopping malls as well as the remainder of the downtown business district,” and “a downtown pedestrian plaza.” In addition, LDS Church officials stated that the Plaza would “provide a public environment,” “enhance the urban fabric of the downtown area,” “emphasize Main Street as a primary pedestrian walkway,” and “assist Main Street, which is the heart of the shopping area, to become the most pedestrian oriented street in Salt Lake City.”

30. As the Court of Appeals confirmed in *Main Street I*, “the actual purpose and use of the Plaza here is a pedestrian thoroughway for the general public.” The Court of Appeals explained that “[t]his is not merely the use which the City has in practice permitted, but also the express purpose for which the City retained the easement.” According to the Court of Appeals, the City’s stated purposes for promoting and approving the overall project were to “increase usable public open space in the downtown area, encourage pedestrian traffic generally, stimulate business activity, and provide a buffer closed to automobile traffic between the residential area to the north of the plaza and the business areas to the south.”

31. Moreover, the Easement had particular public importance for the City because of the role the City envisioned the easement would play in the character and development of downtown

Salt Lake City. While the City wanted to close the street to automobile traffic, it simultaneously wanted to preserve and encourage pedestrian traffic. The Easement through the Plaza was specifically retained in order to preserve and enhance the pedestrian grid in the downtown area. The record established that developing pedestrian malls by closing downtown streets was a stated goal of various long-range City plans for almost forty years. As the City itself asserted, the Easement was a necessary means of accomplishing these public purposes even as it sold the underlying property to the LDS Church. Indeed, the City contended throughout the *Main Street I* litigation that the City would not have agreed to the sale “but for” the Easement guaranteeing public access. The City’s actions approving the sale and resulting property ownership structure were thus specifically designed to ensure that these aims were accomplished, and the Pedestrian Easement was central to these goals. These circumstances indicate the easement was infused with public purposes even broader than providing pedestrian walkway.

32. Despite this factual record, the LDS Church sought to argue in *Main Street I* litigation that the purpose of the Easement was solely for ingress and egress to Church facilities. But as the Court of Appeals noted, this claim was “at odds with the publicly and legislatively stated purposes of the Easement noted above.” The Court of Appeals noted that to the extent individuals with Church business enter onto the plaza, it is not clear they are not utilizing the Plaza for “pedestrian passage,” and presumably the Church would permit those with Church business to enter the plaza in the absence of the easement. In other words, the Court of Appeals elucidated, “providing access to those with [LDS] Church business is more properly characterized as a Church purpose, and does not capture the actual or articulated purpose of the easement, a pedestrian walkway for the public at large.”

33. The purpose of the Pedestrian Easement was to provide a pedestrian thoroughway that is part of the City's transportation grid, and in this respect it is identical to the purpose of the sidewalks along that portion of Main Street previously served. The Easement therefore shared many of the most important features of sidewalks that are traditional public fora. The previous public street and sidewalks provided access between these two city blocks, were part of the city's transportation grid, served this function in a central downtown location, and were highly desirable because of the large size of city blocks in downtown Salt Lake City. It was clearly the intent of the City to retain these aspects of the previous space with respect to pedestrians, especially given that the Ordinance approving the street closure required an Easement "planned and improved to *maintain...public use.*" Similarly, to the extent the walkways provide access to the LDS Church facilities as an end destination for tourists, which is another stated purpose of the Easement, the former sidewalks along Main Street similarly provided tourists with the means of accessing portions of the LDS Church campus open to them. The City therefore deliberately retained the pedestrian thoroughway that existed before it closed the street.

34. Although not reported in *Main Street I*, virtually all of the commercial property immediately south of the Plaza along Main Street is owned by Zion Securities Corporation ("Zion Securities"). Zion Securities is the corporate entity responsible for managing the LDS Church's property and development interests, and is directly accountable to the Corporation of Presiding Bishops. The commercial property owned by Zion Securities rests immediately south of the Plaza along Main Street for at least the length of the block beginning at South Temple until it intersects with 100 South. Zion Securities also owns most of the commercial properties on the south side of South Temple from West Temple to State Street. There are extensive plans under consideration to develop a mixed commercial /residential community in this area under the

control of the LDS Church. In a refrain all too familiar to those who recall how the original plaza deal was presented in 1998, LDS Church's lead strategic advisor for these plans has stated that the Church is driven by several goals, including:

- To increase pedestrian traffic.
- To provide a welcoming, open atmosphere that draws people in while maintaining the "classical" feel emanating from Temple Square and the church's headquarters to the north.
- To integrate and connect retail with office, residential and entertainment opportunities.

("LDS Church gets flak on plan for mall," *Deseret News*, August 6, 2003). Plaintiffs can not avoid the feeling of déjà vu, or the suspicion that the fight over First Amendment and religious freedom is far from over.

B. The Tenth Circuit Court of Appeals Decision and Mayor Anderson's Decision to Protect the Public's Rights in the Face of Fierce LDS Church Opposition.

35. On October 10, 2002, the Court of Appeals handed down its decision involving the Plaza controversy. The Court held that the Main Street Plaza was a public forum and that neither the City nor the Church could unconstitutionally interfere with the rights of individuals or groups to exercise First Amendment liberties on the Plaza. The Church immediately announced its decision to appeal and at the same time, called on the City to abandon all interest in the Plaza. Salt Lake City Mayor Ross "Rocky" Anderson, in the first of what were many public statements in support of the important First Amendment principles in the Court of Appeals decision, rejected this approach out of hand and held a press conference where he stated that giving up the easement would be "a betrayal" of the interests of Salt Lake City and of the public. The Mayor also indicated his view that there were no legal grounds to challenge the ruling on appeal and that the City would not be joining in the Church's efforts to seek further review of the decision.

Instead, the Mayor announced that his office would comply with the Court of Appeal's decision and would direct its efforts at drafting reasonable time, place, and manner regulations.

LDS Church officials rejected the idea of time, place, and manner regulations and immediately sought to exert the Church's considerable influence on the process of government.

36. Through the intercession of senior LDS Church officials and the influence of LDS Church owned media, the Mayor's decision was widely criticized and came under attack from many different quarters. Aside from the LDS Church, no one was more critical than the City Council itself, which twice met in closed sessions following the Mayor's decision to formulate a plan to sidestep the Mayor's time, place, and manner proposal. Individual members of the City Council called on the Mayor to abandon the easement. On October 17, 2002, shortly after the Court of Appeals decision, the City Council allocated funds to retain outside counsel in order to determine whether it could join the Church's appeal, and to determine whether the Council had the power to relinquish the City easement without mayoral approval.

37. In response to the mounting criticism, the Mayor appeared to back away from the time, place, and manner proposal and announced his intention to craft a solution that balanced the Church's interest in the property and against the public's rights. The Mayor organized a special advisory board made up of leading members of the community, including the Presiding Bishop of the LDS Church, to develop a plan that would balance the interests of the City and the Church. The Mayor also sought a legal opinion from the City Attorney's Office outlining how best to accommodate those interests. The City Attorney's Office prepared a memorandum, which the Mayor subsequently distributed to the public. The memorandum dated October 18, 2002, outlines several options available to the City, including (1) conveying the easement outright to the LDS Church, (2) conveying the easement to the Church subject to a possibility of

reverter or with an executory interest in favor of a third party, and (3) adopting reasonable time, place, and manner regulations. While the City Attorney did not make any recommendation, the memorandum noted that “although the City’s conveyance of the easement to the LDS Church would provide the benefit of the bargain to the Church, it would do so only at the expense of the benefit of the City.”

38. The advisory group assembled by the Mayor met at least twice in the immediate days following the Court of Appeals’ decision. At the first meeting, Mayor Anderson and the LDS Church remained intent on ensuring public access to the plaza. Despite reservations that the solution might be unconstitutional, Mayor Anderson proposed a plan to the group that attempted to guarantee both public access to the plaza as well as preserve the Church’s right to impose restrictions on speech and conduct by having the City surrender its easement in exchange for the LDS Church ensuring unfettered public access. *Deseret News*, “Plaza issue to pit mayor vs. ACLU,” October 15, 2002. Then City Council chairman Dave Buhler applauded the Mayor’s efforts to resolve the issue, calling it “an opportunity for the mayor to show some leadership in solving a very difficult issue.” *Deseret News*, “Plaza issue to pit mayor vs. ACLU,” October 15, 2002. Despite Mr. Buhler’s optimism, and although Presiding Bishop Burton affirmed that the Church had “no plans to close (public access) off,” and that “we want people to have access,” the group failed to agree on a solution. *Deseret News*, “Plaza solution eludes think tank,” October 16, 2002.

39. At the second meeting on October 21, the advisory group continued their deliberations. According to numerous newspaper accounts, Presiding Bishop Burton made a formal request of Mayor Anderson to relinquish the City’s easement through the Plaza in order to reinstate its speech, conduct, and dress restrictions. The issue purportedly was not resolved.

40. On October 22, 2002, Mayor Anderson released an eight-page statement rejecting Presiding Bishop Burton's request and confirming that the City would not give up its easement through the plaza. In an announcement accompanying the release of the 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, and 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*” (emphasis added).

41. In choosing to retain the easement on behalf of the City, Mayor Anderson posed the question “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.” Mayor Anderson publicly reaffirmed in an October 23, 2002 *Deseret News* article that the City would not cede its easement “under any circumstances.”

42. Although Mayor Anderson was hopeful that his decision to keep the easement and to promulgate time, place, and manner restrictions would put an end to the controversy, Church officials and the City Council were simultaneously charting a different course. The Church filed a petition for rehearing in the Court of Appeals and embarked on an aggressive media and marketing campaign to pressure the Mayor to abandon his proposal. LDS 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.” This title was carefully chosen code intended to invoke the LDS Church belief that God through his “Prophet,” LDS President Gordon Hinckley, has endorsed the Church’s position on the Plaza controversy. Under LDS Church doctrine, “the Church is led by revelation from God to a living prophet” who “speaks for God, with divine power and authority.” See “Prophets,” available at www.mormon.org/learn (last viewed July 28, 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 to warn the world of coming events.” *Id.* Thus, when President Hinckley speaks to Church followers, he speaks not only with the authority of God, but God speaks directly through him by revealing “visions.” See “Prophets,” available at www.mormon.org/learn (last viewed July 28, 2003). Questioning the edicts of LDS authorities is viewed as subversive. Dissent is not tolerated and is considered heretical. As the eminent LDS first counselor N. Eldon Tanner famously declared in the official church magazine *Ensign*, in April 1979, “[w]hen the Prophet speaks, the debate is over.”

43. The letter from LDS Church President Hinckley described 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. The message: get rid of a public access easement through the plaza so the Church

can bar protests and other unwanted behavior and speech. Shortly thereafter in a rare move, two general authorities of the LDS Church met with media reporters to talk about the Main Street Plaza and delivered the same message.

44. In addition to coded religious rhetoric and glossy brochures, the Church also used less dignified tactics to advance its interests in controlling speech in downtown Salt Lake City. For example, 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 one article titled “Rocky Viewed as Plaza Profiteer,” printed on October 28, 2002, Church attorneys suggested that “the mayor was acting more as a profiteer than a crusader for justice.” In a transparent attempt to inflame public Mormon opinion and to pressure Mayor Anderson into relinquishing the easement, the article provokingly suggested that the Mayor did not fear whatever backlash his decision to retain the easement might invoke among 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.” 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.

45. The City Council did not hesitate in setting about to do the Church’s bidding. Shortly after the Tenth Circuit decision and the Church’s immediate demand that the City give up the easement, the Council hired its own attorney and instructed him to determine whether it could override the Mayor’s decision to enact time, place, and manner regulations. Then-Council Chair Buhler and Councilman Jergensen issued public statements critical of the Mayor’s decision and in support of the Church’s position. It was plain that the Mayor and City Council had

staked out different positions on the Plaza controversy and that the Council sided with the LDS Church.

46. The Mayor initially tried to deflect the pressure being mounted by the Church and the City Council. Despite the campaign to discredit the Mayor's time, place, and manner proposal, he 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 easements. 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.

47. In addition, Mayor Anderson accused then -- Council Chair Buhler and Councilmember Jergensen of being "extremely biased" in the Main Street Plaza matter because of their religious affiliation with the LDS Church. In a contentious City Council meeting on November 20, 2002, Council Chair Buhler rebuked the Mayor for commenting to the *New York Times* that the all-LDS Council was favoring the Church. In a statement attributed to Mayor Anderson in a *New York Times* article, titled "*Plaza Dispute in Salt Lake Roils Citizen Over Religion*," (November 16, 2002), the Mayor stated that "[t]he City Council and I have disagreed on a number of things in the past three years, but they have never taken such extraordinary steps

to somehow go around me on administrative matters. Why would active, participating members of the LDS Church do this when the matter directly involves their Church? I think the answer is obvious.” In response to the criticism leveled by the City Council following the Mayor’s charges of bias, Mayor Anderson again alluded to the bias of Council members when he stated in published local reports that “[e]verybody in this community knows how [Council Chair Buhler] is going to come down on this issue. He is clearly in favor of giving away the public’s right of access.”

48. 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. In the above-referenced *New York Times* story describing the rancor and mistrust the Plaza controversy was creating along religious lines, Mayor Anderson stated 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.”

49. 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 disenfranchise 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 foster a sense of community and help 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.”

50. 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.” The Mayor explained to the *Deseret News* that there would have been a public uproar if the Plaza would have been dubbed an ecclesiastical park prior to the City’s sale: “This [renaming of the Plaza] is all very similar to the way in which the Plaza was characterized when it was being promoted to the public before the deal was approved by the Council and then when the matter was in litigation. All of a sudden it was referred to as a quote ‘ecclesiastical park.’ There hasn’t been much consistency in terms of how the nature of this plaza has been represented to the public. I think that’s unfortunate and simply creates more suspicion and divisiveness in the community.” 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 reserve the easement on behalf of the public. The Mayor thus explained to the *Deseret News* on November 19, 2002 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.” Five days later, Mayor Anderson echoed his position in the *Deseret News*, 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].”

51. 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's initial reaction was skepticism, and he continued to stand 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 is 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." The Mayor also believed that a sale of the easement was inconsistent with the legal position previously staked out by the Church that the easement itself (and not the restrictions contained in the easement) was no longer enforceable. The City's position all along has been that it is the restrictions that are unenforceable, not the easement. The following day, Mayor Anderson stated that he "believe[d] that Salt Lake City government has a significant interest in providing protections for those seeking peaceful refuge on the plaza."

52. On December 1, 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:

Character. Integrity. Honesty. Reliability.

Do we really value those traits? Or do we value them only when it is convenient or when they serve our interests? Do we evaluate questions about what we ought to do through the lens of popular opinion, our own biases and our own benefits? Do we believe ourselves to be people of integrity, only to rationalize dishonest acts or the breaking of promises when we think we can benefit from such conduct, when we can brush off the parts of our promises we seek to avoid by referring to them as "mere technicalities," or when others say it is really OK to go back on our word?

"We should each abide by our written agreements and our promises."

Do you agree or disagree with that proposition? Or does your answer depend on whether you will benefit by keeping your word? When you say "I promise," are others to assume that you may go back on your promise if you later change your mind? If so, why would anyone ever believe you again? What good are your promises? What good are your written commitments if you later change them because things did not turn out as you had hoped they would?

After I read the ruling of the U.S. Court of Appeals for the 10th Circuit regarding the Main Street Plaza, I applied the ethical principles that should control any decisions on behalf of

our city. I believed that both parties to the Main Street Plaza transaction — Salt Lake City Corp. and the Presiding Bishopric of The Church of Jesus Christ of Latter-day Saints — had an ethical obligation to abide by the essential terms of their written agreement, if that could be done within the bounds of the U.S. Constitution. The essential terms of that written agreement were that (1) the property would be sold by the city to The Church of Jesus Christ; (2) The Church of Jesus Christ could impose extensive restrictions on conduct and other expressive activities at the plaza; and (3) the city would retain an easement on the property, providing for a perpetual right of access on and across the property for the public, 24 hours a day.

I sought the counsel of several good and wise people in our community, including Presiding Bishop David Burton, Catholic Diocese Bishop George Niederauer, Episcopal Diocese Bishop Carolyn Tanner Irish, former City Council members Keith Christensen and Deeda Seed, constitutional and real-property law experts, and two university professors who specialize in ethics. I also conferred with attorneys in the Salt Lake City Attorney's Office. After much research and several meetings and conversations, it became clear that, as the Court of Appeals indicated in its ruling, a governmental entity cannot assure public access and, at the same time, agree to restrictions on freedom of expression such as those set forth in the Special Warranty Deed signed on behalf of The Church of Jesus Christ and the city.

At that point, we were compelled to focus on another important provision of the deed, the "severability clause." That clause provides that if any of the terms or restrictions in the deed are deemed by a court to be unconstitutional or otherwise unenforceable, the remaining terms are to remain binding and enforceable. In other words, if a court invalidates the restrictions on conduct because they violate the First Amendment, the city shall still retain the easement, providing for the public a perpetual legal right of access to the plaza.

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 (emphasis added).*

Tremendous pressure has been brought to bear on the City Council and me to go back on the written agreement and the promises made to the public. In spite of this pressure, I cannot, and will not, break the word of the city (emphasis added) — and I disagree with the insistence that The Church of Jesus Christ be able to alter its written agreement. In fact, as I have repeatedly maintained, it is not for me or the City Council to change the commitment previously

made. What should now occur was determined when The Church of Jesus Christ and Deedee Corradini signed the deed, committing that if the restrictions are invalidated by a court, everything else (including the retention by the city of the easement) shall remain the same. That part of the agreement was not just a legal technicality; rather, the parties and all of their lawyers well knew what was contemplated in the event the restrictions were deemed unconstitutional.

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* (emphasis added). 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.

I plead with this community and with the City Council to do the right thing (emphasis added). Insist upon adherence to our written agreements and our promises. And set an example of integrity in public affairs — one which will demonstrate that, as a community and as individuals, we indeed do what we say we will do — and that our word is our bond.

53. 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. From the Mayor's point of view, the proposal gave the Church "95%" 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. The 5% the Mayor retained for the public compromised a right of way across the narrow strip where pamphleting and certain other time-honored means of expression could also continue. As more fully detailed below, however, the Mayor's "95%" time, place, and manner proposal was effectively dead before it ever saw the light of day, because notwithstanding the

Mayor's substantial efforts the LDS Church made clear it would accept nothing less than 100% of what it sought, *i.e.*, the Church would not accept any compromise that would allow any non-Mormon proselytizing or other "offensive" First Amendment activity on the Plaza. 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.

54. The Mayor responded to the Church's position with a combination of frustration and sadness. The Mayor is quoted as saying that "[w]e've extended more than an olive branch" to the LDS Church, and that he had "gone as far as he can to appease the LDS Church over the divisive Main Street Plaza debate." Growing increasingly weary and besieged by countless e-mails, letters, and phone calls from angry people calling for the City to give its easement to the Church, Mayor Anderson lamented that the Plaza situation had "taken a terrible toll" on him and that he had gone through several months of "personal hell" himself. He continued, "I physically feel the hatred and bitterness directed at me personally...the e-mails, the phone calls, the calls by Stake presidents to get people to come to public meetings to speak out...I have to wonder sometimes about people who hold themselves out to be religious when they can so maliciously attack another human being for doing what he thinks is the right and honorable course...I'm getting absolutely pummeled." Mayor Anderson's statements are reported in a December 6, 2002 *Deseret News* article.

55. Simultaneously, the LDS Church increased the pressure on government officials to surrender the easement. In a rare move, about a dozen Salt Lake City "Stakes" of the LDS Church met with their Presidents who directed the "Stakes" to provide public comment supporting the Church's position on the Plaza situation. In the meeting, Church employees

outlined the Church's position on Main Street Plaza so that the "Stakes" could answer questions when asked. Along with spreading information, Church employees asked the "Stakes" to raise their voices at City Hall in support of surrendering the easement. According to one LDS Church member as reported in the *Deseret News* on December 9, 2003, each "Stake" asked that at least ten members attend City Council meetings to support the Church's Plaza position.

56. The dispute then shifted to the City Council where there were more recriminations, charges, and countercharges. On December 10, 2002, the Council held a meeting where they invited past and current officials involved in the Church dispute to testify. Former Mayor Corradini, who agreed to the original sale of the Plaza to the LDS Church, testified that the Plaza was supposed to be open to public access and controlled by the LDS Church. LDS Presiding Bishop Burton testified that the Church's ability to control behavior and speech on the Plaza was paramount. Others, including former Councilwoman Deda Seed, testified that the Plaza was supposed to function like any other public park, and that any intent the Church might have had to turn the Plaza into an "ecclesiastical park" was well hidden from the City Council. In the end, the only thing resolved was the council's decision to hire outside council to review the Mayor's time, place, and manner regulations.

57. On December 13, 2002, the newly appointed 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 attorney John Martinez previously retained by the council, Rutan wrote that it was a "special warranty deed" – the Main Street sale contract – that created the easement, not the ordinance that closed the street. Rutan explained that while the Council can amend the ordinance, it cannot amend the deed and therefore cannot eliminate the easement. Following the release of the City attorney's opinion,

the Mayor issued a statement reiterating his commitment to preserving the easement: “We are in this together. Together, we must find a solution that achieves almost all of what the parties bargain for without violating constitutional principals and without betraying the promises made to this community and breaking the written agreement between the City and the LDS Church. Getting rid of the easement is an all or nothing proposal that would clearly disregard the promises that an easement would be retained.” The Mayor continued to maintain that his time, place and manner regulations were the only course of action that the City could and should follow: “[O]ur proposed compromise, [the time, place and manner restrictions] provides a win-win solution, allowing for guaranteed public access, as well as the ability to preserve the beautiful, peaceful atmosphere on the plaza.” The Mayor made these statements on Friday, December 13, 2002.

C. Mayor Anderson’s Decision to Relinquish the Easement

58. Just three days later, on Monday, December 16, 2002, the Mayor reversed course. After vowing for months that he would not give up the City’s easement without another guarantee of public access on the Main Street Plaza, 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 Westside. 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 its 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 attorney’s 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. It also extinguished the “right of reverter clause” contained in the original deed in the event of future litigation finding the restrictions on speech unconstitutional. This safeguard was necessary because under the terms of the agreement that were eventually adopted, the City imposed specific land use restrictions on the property designed to ensure that the plaza would function and be used exactly as it did before under the terms of the original Special Warranty Deed. The agreement requires that the LDS Church maintain the plaza as a landscaped area, and prohibits the placement of any structures or fences on the property. These conditions are enforceable through a right of reentry. 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 that the Church was granted under the terms of the original sale. The right of access promised by the LDS Church was a key consideration for both the Mayor and the City Council when it eventually voted to adopt the Mayor’s proposal, and was held out as such during the entire “approval process” described below. When the property was finally closed on seven months later on July 28, 2003, these promises were reiterated by both the LDS Church and Mayor Anderson.

59. The circumstances under which the Mayor’s sudden turnaround occurred remain largely unclear at this juncture, but it is a matter of record that up until the eleventh hour the Mayor desperately tried to gain Church support for his time, place, and manner proposal both directly and through intermediaries with close ties to the Church. Mayor Anderson is quoted as saying that he “bent over backwards” to accommodate the Church’s wishes. The Church rejected these efforts even though the Mayor’s proposal gave the Church 95% of what it wanted. At that juncture, the Mayor obviously recognized that the only issue was: “What can the City get in exchange for the easement?” The Mayor reached this decision even though he recognized that

relinquishing the easement did not serve the public interest, and that there were many other options available to the City. The West side property and all the related consideration may have made it easier for the Mayor to accept the Church's demands, but they were clearly not the determining factor. Moreover, by linking the transaction to the proposed new west side community center, the Mayor simultaneously hoped to shore up his flagging support in a community the Mayor had previously been criticized for neglecting and to discourage litigation that would jeopardize the plans for that center. By any measure, the sole purpose of giving up the easement was to satisfy the Church's demands, and the money and property that changed hands were offered to make that possible. By giving into the Church's demands in a way that so directly advances the interests of the Church, while at the same time disserving the interests of the public, the City's actions "cross[] the line between permissible accommodation [of religion] and impermissible establishment [of religion]."

60. The LDS Church is both politically savvy and financially powerful in Utah, and the eventual deal it struck with the Mayor shows it. In fact, by rejecting the "95%" deal that the Mayor had previously offered, the Church ended up getting much more. Under the terms of the final deal, the City not only abandoned the time, place and manner proposal, and relinquished the easement, but it also purports to give up any "guaranteed" right of public access. The documents conveying the property, moreover, were carefully drafted to avoid any terms that could be construed as creating any right of access or First Amendment rights on the plaza, and contain *poison pill* provisions that release the Church from any obligations to keep the plaza open in the event that a court finds that the City's actions violate the First Amendment. Trading a plot of land in an impoverished west side community and throwing in some money to seal the deal was a real bargain under the circumstances, especially when measured in comparison to the Church's

vast holdings. As the Tenth Circuit stated, however, “the City may not exchange the public’s constitutional rights even for other public benefits such as the revenue from the sale, and certainly may not provide a public space or passage conditioned on a private actor’s desire that that space be expression-free.”

61. The record is also clear that the Mayor and Church officials reached an agreement on the plaza deal out of the public’s view and without any public input. Once the agreement was reached, the deal was a *fait accompli*—despite later efforts to create the appearance that the decision went through a process of public approval. The circumstances leading to the agreement were described by retired judge Raymond Uno in an editorial opinion published July 19, 2003 in the *Deseret News*. Judge Uno is a board member of the Alliance for Unity, the private organization that not only helped broker the land swap agreed to by the Mayor, but which also agreed to raise \$5 million dollars for the west side community center. According to Judge Uno, on Friday, December 13—the very same day that the Mayor issued his press release affirming his commitment to preserve the public access easement—Mayor Anderson called two other influential Alliance members, Mr. James Sorenson and Mr. Jon Huntsman, to present a new proposal that might be more agreeable to the LDS Church than the time, place, and manner regulations announced by the Mayor a week earlier, which the Church had unequivocally rejected. Both Sorenson and Huntsman are wealthy and influential LDS Church members with direct ties to Church leadership. Although the exact terms of the proposal first made by the Mayor are not known at this time, according to Judge Uno, several discussions ensued that evening until past midnight between Mr. Huntsman and Mayor Anderson. The Mayor and Mr. Huntsman then brought the Mayor’s new proposal to a special meeting of the Alliance for Unity on Sunday, December 15, which Judge Uno attended. After considerable discussion, the Alliance

voted unanimously in support of the Mayor's new recommendation regarding a Unity Center. Mr. Huntsman then met with the First Presidency of the LDS Church and a deal was reached.

62. The Mayor's decision to abandon the easement is directly attributable to the pressure applied by the LDS Church and the divisiveness the Church threatened the community with 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 controls the governmental process. Indeed, it can be accurately said that 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—and even then, as this case illustrates, the Church's opposition results in extraordinary efforts to defy and circumvent court decisions. The Plaza controversy promised to re-open old wounds and threatened to divide the City along religious lines. None of the principals in this controversy nor any Utah resident could be unmindful of this threat. The Church deliberately and successfully leveraged this threat to reestablish control over the Plaza. By the Mayor's own account, this danger was the major consideration in his decision to capitulate to the Church's demands – even if it meant the City's interest in the easement had to be subordinated. The Mayor's actions can only be understood as minimizing the response of the non-Mormon population and others who opposed surrendering the easement as a lesser threat to the community and to his Administration—even though a hue and cry was raised at the time charging the Mayor with “selling out” to the LDS Church. This charge lies at the very heart of the traditional divide between the Mormon and non-Mormon communities in Utah, and constitutes a grave challenge to principles of church-state separation that are uniquely at issue in this case.

63. Stripped of the post hoc justifications offered in support of the Mayor's community center proposal, Plaintiffs are left with what the Mayor, the City Council and the Church all acknowledge, and what everyone else familiar with this controversy knows—that this deal was done to bring “peace” to a community threatened with “divisiveness” that was created solely and exclusively by the LDS Church's refusal to compromise by even 5%. The brochure issued by the Mayor's office when it was first announced that a deal was reached with the Church – *A Turning Point for Peace* – could not be more aptly titled. When evaluated in this context, it is plain that all of the so-called benefits to the City are window dressing, subterfuge, and cynicism designed to mask the real motive behind the Mayor's capitulation—to satisfy the demands of the LDS Church by reestablishing its right to exclude protestors from the Plaza.

64. Clearly taking a page from the LDS Church's public relations strategy, the Mayor thereafter mounted a sophisticated public relations campaign of his own to sell his new proposal to the public. He held a midday press conference to announce the new proposal and distributed a prepared statement outlining the plan and his reasons for relinquishing the easement. He said he hoped it would end the controversy and asked the City Council to consider it together with his previously issued time, place, and manner regulations. At the conference, Mayor Anderson was flanked by Presiding Bishop Burton and members of the Alliance for Unity. In addition, six members of the City Council stood behind Mayor Anderson, each of whom subsequently voted to approve the Mayor's new plan and surrender the public access easement to the LDS Church. In response to questions from the press about the public's access to the Plaza, the Mayor gave repeated assurances that the Plaza would continue to function as before and that the public could continue to use it for the purposes it was originally designed. Church officials standing by his

side applauded the Mayor's decision and made no attempt to limit or modify the representation made by the Mayor that the Plaza would continue to function as before.

65. In response to further questions during that news conference, the Mayor acknowledged that he had met earlier in the day with LDS Church President Hinckley and others to finesse the language to be used at the press conference. Mayor Anderson also said he had to back away from the strong statements he originally wrote in his announcement that promised there would be "irrevocable assurance" that people would have access to the Plaza. LDS Church attorneys, and apparently President Hinckley, were worried that such a verbal guarantee, even if it was not in a written document, could spark another lawsuit against Church-imposed restrictions, the Mayor said. Nevertheless, while the Mayor's description of that verbal agreement appears to hedge, he has since reiterated many times that public access was a condition of his *land for peace* deal. Church officials have also reiterated that the property would function as before – subject to the restrictions contained in the original warranty deed.

66. Mayor Anderson also announced at the press conference that he expected that the City Council would approve his new proposal. Thus, while the Mayor later went to considerable lengths to avoid having his proposal being seen as a *fait accompli*, his time, place, and manner proposal (and all the other options available to the City) could now very safely have been pronounced officially dead, having been killed long ago by the LDS Church's unwavering opposition before it was ever announced to the public. Instead, though, in a show of political acumen, the Mayor shifted the debate back to the City Council for consideration of both the "land for peace" proposal and the time, place, and manner proposal, even though he understood that his time, place, and manner proposal was dead because the Council had indicated from the

very first day following the Court of Appeals decision that it thought the Church should be able to exclude protesters from the Plaza.

67. At first individual members of the City Council expressed dismay at the Mayor's proposal to relinquish the easement—even though the Council had supported this action all along. At least four Council members expressed concern over the issue of public access, and their statements accurately reflect the important public interests at stake. The Council's eventual decision to support the Mayor's proposal was nevertheless a foregone conclusion. Based on the divergent views held by the Mayor and the City Council right after the Court of Appeals decision, and considering the Mayor's previous allegations of bias leveled at individual members of the City Council because of their close ties to the LDS Church, Mayor Anderson obviously knew that the Council would approve his proposal.

68. The initial reaction from many members of the non-Mormon community was decidedly against relinquishing the easement. When the City Council held a public hearing attended by hundreds the following day after the Mayor's press conference, Mayor Anderson was forced to concede that a guarantee of public access was critical to the original deal. The Mayor has reiterated this point many times since, including in the promotional materials distributed by his office in support of relinquishing the easement. At the same City Council meeting, the issue of public access was also raised with former City Attorney Roger Cutler, the architect of the original sale of the plaza. The Mayor asked Mr. Cutler to reiterate that the easement, along with the restrictions, was vital to the transaction. Mr. Cutler did so and also validated the Mayor's previous argument that the contract's severability clause means that the City does not have to relinquish the easement.

69. Although the Mayor had hoped for a quick vote on his proposal, it was not until June 10, 2003 that the City Council voted to approve the Mayor's plan. In the interceding months, the City Council "*studied*" the proposal, but effectively did nothing but work hand in hand with the Mayor and church representatives and their attorneys to create a record designed to deflect criticism of the Mayor's decision to abandon the easement. First, the Mayor widely distributed a color brochure titled, *A Turning Point for Peace – Mayor Rocky Anderson's Proposal to the Main Street Plaza Dispute*. On the cover a solemn photograph of the plaza is juxtaposed with pictures of children playing at the Glendale Community Center and a smiling young child sitting at a computer. The brochure is written and formatted in a way that unmistakably seeks to appeal to the desire of all Salt Lake City residents, including plaintiffs, to improve the quality of life for all residents of the City. At the same time, the brochure is calculated falsely and cynically to make it appear as though the surrender of constitutional rights was the necessary price to be paid for such improvement. The brochure offers a timeline of the controversy involving Main Street Plaza, describes the controversy, describes the proposal, and describes the benefits to the Westside community. It also includes a message from the Mayor and the Alliance for Unity, an organization established to promote unity between Mormons and non-Mormons. No attempt is made to offer a balanced view of the controversy or to do anything but link the resolution of the Main Street Plaza "controversy" (created entirely by the LDS Church's entirely by the LDS Church's obdurate inflexibility) to the proposed west side development.

70. To deflect criticism that the deal unfairly benefited the Church, independent appraisals were obtained valuing the public easement and the land being donated by the LDS Church. When the deal was originally announced, the Church land was reported to be valued at \$93,000. It was subsequently appraised at \$275,000. The easement itself was appraised at

\$500,000, a number that Plaintiffs believe does not accurately reflect the property's value. Some properties are simply not susceptible to being valued because of their unique historical and symbolic significance and use. The City additionally conducted two self-serving studies that targeted its earlier position that public access was crucial to the original deal in 1999. The first study, conducted in February 2003 by the Salt Lake City Transportation Division, was a pedestrian impact study of the closure of the Plaza to pedestrians desiring to cross the Plaza as opposed to using it to access LDS Church facilities. Despite the City's adamant contention that unfettered "public access was fundamental to the original agreement," as Mayor Anderson reiterated in his *Turning Point for Peace* proposal, the traffic study attempted 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." Partly in reliance on this study, the Salt Lake City Transportation Advisory Board voted to support the Mayor's proposal to relinquish the easement, despite the fact that this Board had recommended to the Salt Lake City Planning Commission on January 13, 1999 "[t]hat a perpetual public easement for twenty-four hour pedestrian, bicycle, and wheelchair access be retained by the City from North Temple to South Temple within the existing street right-of-way...." The second report, issued by the City Special Event Coordinator in April 2003, similarly attempts to shift the focus away from the impact on pedestrians of the City's surrender of the easement to the superfluous observation of the number of free speech permits requested for the Plaza since the Court of Appeals decision. This study deceptively suggests that the relatively low number of free speech permit requests for Main Street Plaza justified the City's abandonment of the easement and its bartering of the public's First Amendment rights on the Plaza.

71. Mayor Anderson also embarked on a vigorous public relations campaign to sell his “*Turning Point for Peace*” proposal to Salt Lake City’s various community councils and to the public at large. Beginning in January and continuing right up to the City Council vote in early June, the Mayor’s Office made numerous presentations on the new proposal to neighborhood community councils, the Chamber of Commerce, the Downtown Alliance, and other various groups, in order to create wide-scale support for the deal. LDS Church officials were routinely invited to make presentations at these meetings, and the Church orchestrated turnout through its leaders to ensure the appearance of overwhelming public support. These meetings were widely publicized.

72. Although the Mayor framed these presentations as part of an “extensive public process” to “elicit any public comments on any proposal” for the Plaza controversy, these community council meetings and hearings acted almost exclusively as a sales pitch where the Mayor and the LDS Church presented the “community center” proposal to these groups and neighborhood councils in glowing terms. The Power Point presentations by the Mayor were neither balanced nor designed to encourage debate, and the LDS Church heavily influenced them. For example, in response to arduous criticism by members of the all-LDS City Council and others over language from the Mayor’s Power Point presentation that stated that the original time, place, and manner solution for the Plaza was Mayor Anderson’s preferred option, the Mayor ordered staff members to delete the language. Mayor Anderson instead began introducing his slideshow presentation (as he did before the Planning Commission on April 9, 2003) by explaining that one of his goals was to solicit further input and support for his community center proposal, which he believed was by far the best and most viable proposal for a resolution to the Plaza controversy. The Mayor also told the *Deseret News* that the notion that he

preferred time, place, and manner regulations was hampering fund raising for his community center plan. The City also created a website based on the Mayor's *Turning Point for Peace* proposal to provide information about and to promote the new plan.

73. At the same time, the Mayor's office, working collaboratively with LDS Church officials, drafted a new document conveying the public easement to the LDS church, giving the LDS Church "complete and absolute control over all activities and uses of the [Plaza]." The drafters went to great lengths to avoid the creation of any legally enforceable right of access that could be construed as creating a public forum, while at the same time including language seeking to ensure that the Plaza functioned as before. Instead of defining the public's right of way as an "easement," the City sought through smoke and mirrors to conceal that reality by using language that effectively ensures that it will continue to be used as before without saying so in direct terms. The pedestrian access easement was replaced by language that requires the LDS Church to use and maintain the Plaza as a "landscaped space," and which prohibits the Church from erecting any fences or obstructing the view corridor. These conditions are secured by a "right of reentry" that runs in favor of the City. Although no mention of the public's right of access is made explicit in the amended Special Warranty Deed, both the City and the LDS Church have acknowledged that the public will, *as before*, have unrestricted access to the Plaza—except that the Church has regained the right to prohibit First Amendment activity on the Plaza. In effect, the City has worked hand in hand with the LDS Church to sidestep the Court of Appeal's decision simply by recharacterizing the City's interest in the property under circumstances that do not alter in any way the fundamental characteristics of the Plaza or its use as a pedestrian thoroughfare.

74. The City and LDS Church went to extraordinary lengths to ensure that even if their actions were construed as intended to preserve a public right of way, the Church would have a fallback position preserving its right to prohibit First Amendment activity on the Plaza. The City and LDS Church thus drafted the amended Deed to protect the Church from future litigation by incorporating various “poison pills” into the revised document. According to one of these new provisions, if a court holds that the City’s right of reentry—which effectively guarantees that the Plaza remain a pedestrian thoroughfare—creates or establishes the basis for a First Amendment forum, such right “shall immediately and automatically terminate,” giving the LDS Church continued ability to forbid First Amendment activity. Remarkably, should the right of reentry be terminated, this new provision also asserts that if the LDS Church fails to use and maintain the Plaza as a landscaped space or violates the view corridor and fencing restrictions, 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. The inclusion of these provisions in the new Deed, each of which is exceptionally beneficial to the LDS Church, can only be viewed as having the purpose of ensuring that the Church maintain its ability to police First Amendment activity on the Plaza by shielding the Church from any possible threat of litigation.

75. The City and LDS Church subsequently entered into a binding contract (“Settlement Agreement”) to affirm the terms of the land swap proposal, including the surrender of the public access easement and the closing terms of the transaction, and to restate the amendments to the Special Warranty Deed. In a particularly objectionable provision aimed to protect the City and the LDS Church from intervening litigation, the Settlement Agreement allows either Mayor Anderson or the CPB to void the deal if a third party commences a lawsuit or administrative proceeding against the City or the LDS Church during the closing period.

Under this provision, if a third party filed a suit during the closing period and the Mayor or CPB terminated the deal, the \$5 million raised for the west side community center would be lost since those funds are contingent on the deal being finalized. This deliberate and manipulating ruse on the part of the City and the LDS Church set the interests of Salt Lake City residents who desired to protect their First Amendment liberties on the Plaza against the interests of residents of the west side of the City in receiving a community center in their impoverished neighborhood. By playing off of the compassion that residents who disagreed with the surrender of the easement might feel toward their west side counterparts who desired the community center, the City and LDS Church ensured a prompt and trouble-free closing at the expense of constitutionally-protected free speech rights.

76. The City Council for its part made extensive legislative findings adopting the self-serving record developed collaboratively with LDS Church and City officials in support of the *Turning Points for Peace* proposal. These findings were incorporated into the enabling legislation when the City Council eventually voted in support of the Mayor's proposal to surrender the public access easement. The City Council went through the motions of conducting a number of public hearings on the proposal, but the Council's findings are merely a reiteration of the record described above, and the terms of the amended Special Warranty Deed agreed to by the Mayor and the LDS Church.

77. The one obstacle to the City's effort to present a seemingly united front in support of the proposal came by way of the Salt Lake City Planning Commission, which voted 4 to 3 on April 9, 2003 to reject the Mayor's "community center" solution. While the City Council curtly attributed the Planning Commission's decision to pandering to those who opposed the surrender of the easement, statements by members of the Planning Commission at the meeting suggest

otherwise. Instead, the record shows an earnest and compelling concern on the Commission's part with pedestrian access, free speech rights, and Establishment Clause violations. Thus, several Planning Commission members (including Ms. Jennifer Seelig, Ms. Laurie Noda, Mr. Tim Chambless) suggested that guaranteed pedestrian access through the Plaza was the most important element for the Commission to consider. These members also found that as a matter of public policy, time, place, and manner regulations were the better solution to the Plaza controversy. Ms. Noda and Mr. Chambless also noted that it was unclear whether the community center proposal would actually end the divisiveness in the community. Additionally, Mr. John Diamond objected to the surrender of the easement because of its potential to create a LDS Church Campus that was not open to the public, and he also criticized the fact that the Mayor's new proposal linked the development of the community center to the easement. Mr. Diamond contended that the community center should be developed regardless of the status of the easement. Far from pandering to anti-Mormon interests, the Planning Commission's findings fully support its conclusion. Ultimately, however, the Planning Commission's decision to stand firm on Mayor Anderson's earlier commitment to retaining the public access easement, and its refusal to endorse the Mayor's new proposal did not affect the outcome of the City Council's vote to surrender the easement.

78. 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.

79. At the press conference announcing the closing of the deal, LDS Church officials reiterated what was suspected all along about how the Plaza would function. To no surprise, Presiding Bishop Burton said the Plaza would continue to function as it did before and that the Church has no plans to restrict access to the Plaza—“except for shouting protestors.” Presiding Bishop Burton added, “physically speaking, there will be no changes to the Plaza...and we hope that people will continue to come and enjoy it.” Presiding Bishop Burton said that pedestrians will still be welcome to traverse the 660 foot “private walkway.” In language all too familiar to anyone acquainted with this controversy, Presiding Bishop Burton urged those who object to the Church’s reestablished right to restrict speech on the Plaza to give up the fight lest they want to see the community “further divide[d].” Mayor Anderson’s remarks targeted the same listeners who might be considering litigation by stressing that the agreement reached with the LDS Church would bring a conclusion to the months-long Plaza drama that was dividing the City along Mormon and non-Mormon lines. The Mayor, however, failed to offer any reasons supporting his speculative claim.

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 78 of this Complaint as if set forth fully herein.

2. The Defendants, through their actions as described above, have violated Plaintiffs First Amendment rights 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, Article I Section 4 of the Utah Constitution)

1. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs 1 through 78 of this Complaint as if set forth fully herein.

2. The 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 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 the 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 by the City 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 the City 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. sec. 1988;
- (6) any other relief as this court in its discretion deems just and appropriate.

Respectfully submitted,

Janelle P. Eurick
American Civil Liberties Union of Utah
Foundation, Inc.
355 North 300 West, Suite 1
Salt Lake City, Utah 84103
(801) 521-9862 ext. 103

Mark J. Lopez
American Civil Liberties Union
Foundation, Inc.
125 Broad Street
New York, New York 10004
(212) 549-2608

ATTORNEYS FOR PLAINTIFFS
August 7, 2003