

FILED

08/03/2022

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 22-0422

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0422

ANTHONY WEIMER,

Petitioner,

v.

ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY, and  
HONORABLE HEIDI J. ULBRICHT, Presiding

Respondents.

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**PETITION FOR URGENT WRIT OF SUPERVISORY CONTROL**

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Eleventh Judicial District Court, Flathead County, Cause No. DC-20-207C

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ANTHONY CRAIG WEIMER  
1301 2<sup>nd</sup> St W.  
Kalispell, MT 59901  
Tel: 406.309.0321  
e-mail: unitedstatescode@gmail.com

HON. HEIDI J. ULBRICHT  
Flat. Count. Just. Cent., Dept. 3  
920 South Main Street, Suite 310  
Kalispell, MT 59901  
Tel: 406.758.5906  
e-mail: hulbricht@mt.gov

STACY LYNNE BOMAN  
Deputy County Attorney  
Flathead County, Montana  
820 S. Main St.  
Kalispell, MT 59901  
Tel: 406.758.5630  
e-mail: sboman@flathead.mt.gov

*Petitioner Counsel, Pro Se* | *Respondents*

## STATEMENT OF JURISDICTION

The Montana Supreme Court's acceptance of jurisdiction is appropriate and necessary because the District Court is proceeding under mistake of law which if not corrected will result in manifest miscarriage of justice. The District Court denied Defendant's pretrial motions rendering the normal appeal process inadequate and prejudiced any preservation of the issues herein for appeal. The trial is set for the August 22, 2022 jury trial term and therefore supervisory control is urgent.

The Montana Supreme Court is an appellate court, but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. See *Barrus v. Mont. First Judicial Dist. Court*, 2020 MT 14, 398 Mont. 353, 456 P.3d 577. See also Mont. R. App. P. 14(1). This Court has general supervisory control over all other courts. See Mont. Const. art. VII, § 2(2).

The supreme court has jurisdiction where a district court is proceeding under mistake of law pursuant to Mont. R. App. P. 14(3)(a).

## STATEMENT OF ISSUES

1. *§ 1-1-540, MCA does not authorize displays to establish any specific religion or set of religious beliefs or to dissuade the free exercise of any religion or set of religious beliefs on public land in Montana.*

2. *Abatement of a public nuisance specially injurious to a person does not require extenuating or emergent circumstances. And Abatement law gives right to recover after abatement.*
3. *Ten commandments Establishment Clause case law Van Order v. Perry was reported incorrectly and the Lemon test finds violation consistently.*
4. *Judge Ulbricht personally made false claims against the Defendant.*
5. *The remedy per the Montana Human Rights Act under chapter two of MCA are for alleged violations not actual violations and do not prevent a person's right to protect from personal injury and right to use force pursuant to chapter one.*

### **STATEMENT OF CASE**

The Defendant's pretrial motion defenses and requests were capable of determining this matter without going to trial.

An evidentiary hearing was requested for the purpose of testimony of and by witness' and admittance of evidence into the record relevant to the defense. The District Court either quashed or denied witness' from testifying and admitting evidence into the record necessary in defense. Judge Ulbricht later produced findings of fact and conclusions of law under mistake of law, including unsupported by evidence. The presiding judge in this matter further denied the Defendant from raising the issues authorized by this Court that the Defendant raised on appeal.

The pretrial motions raised two defenses, that being abatement of a public nuisance as specially injurious and both right to protect from personal injury and use of force applicable to the substantive rights of the Defendant and him having

so exercised. Judge Ulbricht denied these defenses while simultaneously making false claims against the Defendant.

### **STATEMENT OF FACTS**

On December 17, 2021, the Defendant filed notice of motions – pretrial motions of the Defendant (doc. 100). Weimer provided the defenses of abatement of a public nuisance pursuant to § 27-30-204, MCA, and right to protect from personal injury pursuant to § 49-1-101, MCA, right to use force pursuant to §49-1-103, MCA, on the basis that the monolith bearing the ten commandments on Flathead County public property violates his U.S. First Amendment right to freedom of religion. Rights afforded under the establishment clause and free exercise clause; Montana declaration of rights Section Four, and §§§ 1-1-540, 49-1-102, and 49-3-205(1), MCA.

An evidentiary hearing was held on June 20, 2022. The District Court quashed or denied any and all witness’ from testifying either before or at the hearing. Defendant objecting. The subpoenas had been issued approximately three weeks prior to the hearing. No evidence was permitted or admitted into the record during the hearing by the Court.

On July 6, 2022 the District Court entered its FFCLO on Defendant’s “Notice of Motions Pretrial Motions of Defendant.” See Ex. A. The FFCLO denied the Defendant’s pretrial motions and requests and prohibited all defenses from

being raised at trial.

A pretrial conference took place on July 13, 2022. The Defendant objected to the FFCLO and stated too that the issue of violation of his U.S. First Amendment right to free exercise had not been decided. The District Court “advised the Defendant to file a notice of issue or motion to dismiss.” An issue that intersects with a motion already denied would lapse as a motion for reconsideration. Section 3-1-502(1), MCA prohibits subsequent applications for the same order to any other judge, except of a higher court, and the Montana Supreme Court’s many statements that motions for reconsideration do not exist under the Montana Rules of Civil Procedure or the Montana Rules of Appellate Procedure. *See, e.g., Horton v. Horton*, 2007 MT 181, ¶ 14, 338 Mont. 236, 165 P.3d 1076.

The Defendant petitions for supervisory control.

## **ARGUMENT**

### **I. The Monolith Bearing the Ten Commandments is Beyond “In God We Trust.”**

Pursuant to § 1-1-540(1), MCA: Subject to the provisions of subsection (3), “[A] state agency or unit of local government may display the national motto, “in God we trust”, as adopted by congress in 1998 (36 U.S.C. 302), in or on public buildings or state-owned land occupied by a state agency or unit of local government. For purposes of this section, the use of the word “God” is not intended to further the establishment of any specific religion or set of religious beliefs or to dissuade the free exercise of any religion or set of religious beliefs”.

Subsection (3) states:

“The content of any writing, document, or record described in subsection (2) may not be censored solely because the writing, document, or record contains religious references, nor may any writings, documents, or material be selected for display in order to advance a particular religious, partisan, or sectarian purpose.”

The ten commandments are 1) Judeo-Christian; 2) a set of religious beliefs; and 3) advance a particular religious and sectarian purpose. The District Court is proceeding under mistake of law and invokes this Court’s jurisdiction pursuant to Mont. R. App. P. 14(3)(a).

## **II. The District Court Proceeded Under Mistake of Law Regarding Both the Defense of Abatement of a Public Nuisance and Use of Force.**

Montana law authorizes the Defendant to self-remove from public State-owned land occupied by Flathead County the monolith bearing the ten commandments as specially injurious to him. See § 27-30-204, MCA. The District Court cites *Quong v. McEvoy*, 70 Mont. 99, 104, 224 P. 266, 268 (1924). This issue was presented before the preceding Judge Amy Eddy and raised on appeal but never adjudicated. Currently, the District Court argues the same argument as Judge Amy Eddy independent of the parties. As the Defendant provided in prior court filings, the comparative factual differences between *Quong v. McEvoy* from this matter is that this matter involves the Defendant’s statutory and constitutional rights and the fact that he entered public property not owned by a private person. The District Court’s cited caselaw is flawed though, because, Mrs. McEvoy

claimed abatement of a public nuisance when the applicability is factually incapable. Mrs. McEvoy wrongfully intruded her own building her tenants leased at night without notice. She took \$200 worth of the Quong's personal property, locked the doors against the Quong's and then proceeded to alter the premises to render them unfit for the café business to be operated. The facts of the case are wholly different and do not allege that Mrs. McEvoy was specially injured neither that her constitutional rights were violated.

Judge Ulbright further makes her own claims that breach of the peace and unnecessary injury occurred to render abatement of a public nuisance not available, but the defense was denied from calling witness' at the evidentiary hearing for submission of evidence into the record. The State did not counter argue that the lawn and road were heavily damaged and unmaintained during the time of the ten commandments removal and that they remain in that current state to this day and there is no claim for damages or bill of repair in the record from initiation of the information. Furthermore, Judge Ulbright claims that the Defendant pulled the ten commandments into traffic. This is a serious claim made by Judge Ulbright. But it did not occur. A vehicle would've had to have made physical contact with the ten commandments' stone had it been pulled into traffic. This also reflects on traffic or pedestrian passage rendered impassible for disorderly conduct to occur. The District Court is making false claims to try and protect the Flathead County from

liability due to the Defendant's right to recover after abatement pursuant to § 27-30-104, MCA.

Similar to abatement of a public nuisance, the remedy authorizing the Defendant's right to protect from personal injury and use of force under Title 49, chapter 1, do not require administrative or remedy by court proceedings. The District Court cites § 49-2-512(1), MCA. However, the Montana Human Rights Act (MHRA) under chapter 2 provides exclusive remedy for alleged acts constituting violation of Chapter 3 or Chapter 2. It does permit a remedy by legal proceedings for alleged violations of Section 4 of the Montana declaration of rights and discrimination pursuant to § 49-1-102, MCA, but the plain language of the statute does not impair a person's right to protect from personal injury and to use force against actual violations pursuant to §§ 49-1-101 and 103, MCA. These are issues pertinent to an actual vindictive prosecution. "The principle of prosecutorial vindictiveness originates from the idea that it is unconstitutional for the State or its agent to penalize a person for exercising his or her legal rights. *See U.S. v. Goodwin*, 457 U.S. 368, 372, 102 S. Ct. 2485, 2488, 73 L. Ed. 2d 74 (1982); *see also Blackledge v. Perry*, 417 U.S. 21, 27-28, 94 S. Ct. 2098, 2101-02, 40 L. Ed. 2d 628 (1974). "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." *Knowles*, ¶ 28 (quoting *Goodwin*, 457 U.S. at 372, 102 S. Ct. at 2488 (internal quotation



omitted)).

The District Court is proceeding under mistake of law pursuant to Mont. R. App. P. 14(3)(a). Both right to protect from personal injury, right to use force and abatement of a public nuisance authorized the Defendant to remove the monolith bearing the ten commandments.

“Supervisory control [] is appropriate where the district court is proceeding under a mistake of law and, in so doing, is causing a gross injustice.” *Evans v. Montana Eleventh Jud. Dist. Ct.*, 2000 MT 38, 5 298 Mont. 279, 995 P.2d 455.

### **III. Van Orden v. Perry was Reported Incorrectly on an Establishment Clause challenge and Also Did Not Include the Free Exercise Clause as Here.**

The State’s motions and responses and the Defendant’s court filings cite the 2005 decision in *Van Orden v. Perry* regarding the ten commandments on the Texas State Capitol Complex. The State argues that the ten commandments on government public property does not violate the establishment clause because of said caselaw. But no test was applied in determining constitutionality. And as Defendant cited, despite sweeping calls for clarity in the judicially-created tests for establishment clause cases, the Supreme Court of the United States has declined to hear those cases where the ten commandments were found to violate the establishment clause under the tried and true three-prong *Lemon* test consistently. Defendant cited four cases among numerous cases that were denied certiorari in

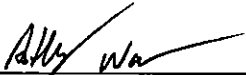
the U.S. Supreme Court after federal circuit courts ruled that the ten commandments on government public land violate the Establishment Clause under *Lemon* test. The District Court knows the U.S. Supreme Court has conflicting Establishment Clause decisions and the many different rulings of lower courts on these ten commandments on government public property. Ruling in favor to continue prosecution of criminal allegations against an individual when judges committed criminal acts to achieve their dispositions is causing injury to the Defendant. Further, in *Perry*, Justice Clarence Thomas' opinion was not concurring. Despite his wish that the First Amendment should not be incorporated into the States, it is. The District Court argues that displays of the ten commandments on public land in Montana are mandated pursuant to § 2-17-808(2)(e), MCA. Although, this statute is specifically for the Montana State Capitol Complex, and returning to the first argument above, the ten commandments violate § 1-1-540(1) and (3), MCA and is relevant to violation of the Defendant's U.S. constitutional right to freedom of religion via the First Amendment Free Exercise Clause bearing with the Establishment Clause and Fourteenth Amendment and Sections 4 and 17 of the Montana constitutional declarations of rights. Binding to Montana abatement law, no lapse of time can legalize a public nuisance amounting to an actual obstruction of public right. See, § 27-30-201, MCA.

Pursuant to 18 USC § 247(a)(2), it is criminal to obstruct a person's free exercise of religious beliefs. The District Court is proceeding under mistake of law and invokes this Court's jurisdiction pursuant to Mont. R. App. P. 14(3)(a).

### CONCLUSION

With the foregoing, the Defendant asks that this Court accept jurisdiction and issue writ of supervisory control and issue stay of trial pending disposition. This Court should reverse the district court's denial of Defendant's motion to dismiss based on violations of the Defendant's constitutional and statutory rights.

Respectfully submitted this 1<sup>st</sup> day of August, 2022.

  
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ANTHONY WEIMER  
*Petitioner, End-User*

## **CERTIFICATE OF SERVICE**

Pursuant to Mont. R. App. P. 14(6), I hereby certify that I have filed this PETITION FOR URGENT WRIT OF SUPERVISORY CONTROL with the Clerk of the Supreme Court of Montana and that I have mailed a copy to each as follows:

Eleventh Judicial District Court, Flathead County  
Hon. Heidi J. Ulbricht

Office of the County Attorney  
Flathead County, Montana  
Stacy Lynne Boman

Signature: \_\_\_\_\_

ANTHONY WEIMER

*Petitioner, End-User*

Dated: 08/1/2022

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Mont. R. App. P. 14(9)(b), I certify that this Petition is printed with a proportionately spaced serif text typeface of 14 points; is double spaced; 12 pages or less; is 2228 words, excluding cover page, certificate of service, and certificate of compliance and appendix.

Dated this 1<sup>st</sup> day of August, 2022.

Signature: \_\_\_\_\_

ANTHONY WEIMER

*Petitioner, End-User*

## **APPENDIX**

Exhibit A – Findings of Fact, Conclusions of Law, and Order on Defendant’s  
“Notice of Motions Pretrial Motions of Defendant.” (doc. 182)