

April 7, 2009

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

SUMMUM, a corporate sole and church,

Plaintiff - Appellant,

v.

PLEASANT GROVE CITY, a municipal corporation; JIM DANKLEF, Mayor; MARK ATWOOD, City Council Member; CINDY BOYD, City Council Member; MIKE DANIELS, City Council Member; DAROLD MCDADE, City Council Member; JEFF WILSON, City Council Member; CAROL HARMER, former City Council Member; G. KEITH CORRY, former City Council Member; FRANK MILLS, City Administrator,

Defendants - Appellees.

No. 06-4057
(D. Ct. No. 2:05-CV-638-DB)
(D. Utah)

ORDER AND JUDGMENT*

Before **TACHA** and **EBEL**, Circuit Judges, and **KANE**,* District Judge.

In *Pleasant Grove City v. Summum*, 129 S. Ct. 1125, 1138 (2009), the Supreme Court reversed this court's opinion in *Summum v. Pleasant Grove City*, 483 F.3d 1044

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

*Honorable John L. Kane, Jr., Senior District Judge for the District of Colorado, sitting by designation.

(10th Cir. 2007) and held that the defendants' conduct does not implicate the First Amendment's Free Speech Clause. Because this conclusion is fatal to Summum's claim that the defendants violated its free speech rights, we AFFIRM the district court's denial of Summum's motion for a preliminary injunction on this issue and REMAND to the district court to conduct further proceedings consistent with this order and judgment and *Pleasant Grove City v. Summum*, 129 S. Ct. 1125 (2009). The mandate stayed originally by our order dated September 5, 2007 is issued forthwith.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge