

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 2, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

JASON WEISS,

Plaintiff - Appellant,

v.

TOWN OF ELIZABETH,

Defendant - Appellee.

No. 23-1042
(D.C. No. 1:21-CV-01533-CNS-NRN)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY, and MORITZ**, Circuit Judges.

Mr. Jason Weiss ran for mayor of the Town of Elizabeth, and the police allegedly removed his campaign signs. So he sued the town.¹ The town moved to dismiss for failure to state a claim, arguing that Mr. Weiss

* Oral argument would not help us decide the appeal, so we have decided the appeal based on the record and the parties' briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

¹ Mr. Weiss also sued other parties, but this appeal involves only the claims against the town.

had not linked the removal of his campaign signs to a municipal policy or custom. The district court agreed and granted the town's motion to dismiss. Mr. Weiss appeals.

The town could incur liability only if Mr. Weiss's injury had stemmed from a municipal policy or custom. *Monell v. Dep't of Pub. Servs.*, 436 U.S. 658, 694 (1978). So Mr. Weiss needed to link the removal of his campaign signs to a municipal policy or custom.

In the amended complaint, Mr. Weiss alleged that

- city officials had removed his campaign signs for failure to comply with Article XII of the town's municipal code and
- Article XII is unconstitutional because it doesn't achieve a compelling state interest and isn't the least restrictive alternative.

Appellant's App'x at 29–31. But he didn't say how Article XII had caused his injury. *Id.*

The town urged dismissal, arguing that the amended complaint had failed to

- identify the particular restrictions violating the Constitution or
- say how these provisions had caused his injury.

Id. at 72–75. Mr. Weiss responded, but didn't say how Article XII had caused his injury. He instead argued that a police officer should have provided notice if the signage had violated the municipal code. Given the continued failure to identify the problematic provisions in Article XII or

say how they had caused the injury, the magistrate judge recommended dismissal.

Mr. Weiss objected. There he said—for the first time—that the problematic provision was § 16-12-70, which limited temporary signs on residential property. The district judge overruled the objection, reasoning that Mr. Weiss

- hadn't identified § 16-12-70 in the amended complaint or in his response to the motion to dismiss and
- hadn't said how the injury stemmed from a municipal policy.

On appeal, Mr. Weiss doesn't say what's wrong with the district court's reasoning. He instead says that Article XII is unconstitutional. Given the failure to say why the district court was wrong, we affirm the dismissal. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015) (stating that the appellant must explain how the district court erred).

Entered for the Court

Robert E. Bacharach
Circuit Judge